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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

~~No. 351.~~ 73

JAMES B. WHITE, APPELLANT,

vs.

GEORGE M. BARBER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 8, 1884.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Thursday, the twenty-ninth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

Be it remembered that on the twenty-third day of January, A. D. 1884, in the December term of said court, A. D. 1883, there was entered of record a certain order in said above-entitled cause, and also on the same day there was filed in the clerk's office of said court a bond for costs and a transcript of the record from the circuit court of Cook county, Illinois, in said above-entitled cause; which said order, bond, and transcript are, respectively, in the words and figures following, to wit:

2 *Order.*

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

On motion of the defendants, by Dent and Black, leave is given them to file and docket the above-entitled cause without prejudice to the right of complainant to move to remand the same to the State court.

3 *Bond for Costs.*

Circuit Court of the United States, Northern District of Illinois.
In Chancery.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and THOMAS B. WHITE.

Cause transferred from State court.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court.

And in default of payment by the plaintiff or George M. Barber of any costs ordered or adjudged to be paid by them, respectively,

we hereby agree and stipulate that execution may issue against our property for any costs taxed against them respectively.

Dated this 22d day of January, A. D. 1884.

DENT & BLACK.

Endorsed: Filed Jan'y 23, 1884. Wm. H. Bradley, clerk.

4 *Transcript.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before the Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the seventeenth day) of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eight.

Present: Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, State of Illinois; L. L. Mills, State's attorney; Seth F. Hanchett, sheriff.

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 24th day of July, 1883, the Bank of British North America, by Boutell, Waterman & Boutell, its solicitors, filed in said court its certain bill of complaint, and caused to be issued out of and under the seal of said court the people's writ of summons, directed to the sheriff of said county to execute; which said bill and writ, together with the sheriff's endorsement thereon, are in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. July Term, A. D. 1883.

5 To the honorable the judges of the circuit court of Cook county, in chancery sitting:

Humbly complaining, showeth unto your honor, your orator, the Bank of British North America, a corporation duly organized and existing under the laws of the Kingdom of Great Britain, now having an office and doing business in the city of Chicago and State aforesaid —:

Your orator respectfully represents that it hath on deposit in its said office at Chicago the sum of sixty-seven hundred dollars standing to the credit of one George M. Barber, of the city of Chicago; that, as your orator is informed and believes, the said money was deposited by the said Barber as security for certain trades or deals in wheat with certain members of the board of trade of Chicago, the said money having been turned over to your orator by the Merchants' Bank of Canada, whom your orator succeeded in business at the said city of Chicago.

And your orator further showeth unto your honor that one James B. White claims that the said sum of money belongs to him, the said White, and that the said Barber, in depositing said money, acted merely as the agent of him, the said White, and that on or about the second day of April, 1883, the said White made demand upon your orator that the said sum of money be paid to him, the said White, and then and there notified your orator that the
6 said sum of money deposited by the said Barber as aforesaid was the money of him, the said White, and he then and there forbade your orator to pay the same or any part thereof to any person except upon the order of him, the said White.

And your orator further showeth unto your honor that on the 10th day of May last the said White commenced in the superior court of Cook county an action against your orator for the recovery of said money, which action is still pending.

And your orator further showeth unto your honor that the said Barber insists that the said money belongs to him and hath, since the commencement of said action, demanded and now demands and insists that your orator pay him the said sum of sixty-seven hundred dollars, and your orator has reason to fear and does fear and believe that, unless restrained by the order of this honorable court, the said Barber will commence an action against your orator for the recovery of said money.

Your orator further showeth that it has always been willing to pay the said sum of sixty-seven hundred dollars to such person or persons as should be lawfully entitled to receive the same or to whom it could pay the same in safety, and it hereby offers to bring the same into court or to pay the same as this court shall direct.

And your orator further showeth unto your honor that it has no interest in said money and makes no claim whatever thereto,
7 but has always been willing and now is willing and ready to pay the same to whoever may be properly and lawfully entitled to the same.

And your orator represents that it does not in any respect collude with either the said Barber or the said White touching the matters in controversy in this cause, nor is it in any manner indemnified by the said Barber or the said White, or either of them, nor has it exhibited this its bill of interpleader at the request of the said defendants, or either of them, but merely of its own free will and to avoid being vexed and harassed touching the matters contained herein; forasmuch, therefore, as your orator is without remedy in the premises except in a court of equity, and to the end that the said George M. Barber and James B. White, who are made parties defendant to this bill, may be required to make full and direct answers to the same, and that the defendants may severally set forth to which of them the said sum of $6,700.00 does of right belong and is payable, and how, in particular, they make out their claim thereto, and that the defendants may interplead and settle and adjust their said demand between themselves, your orator being willing and desirous and agreeing that the said sum may be paid to such of them to whom the same shall, in the judgment of the court, appear of right

to belong, and that your orator may be at liberty to bring and pay the said sum of $6,700.00 *dollars* into this honorable court, which your orator hereby agrees to do for the benefit of such of the
8 defendants who shall appear to be entitled thereto, and subject to the further order of the court; and that the defendants, George M. Barber and James B. White, may be restrained by the injunction of this court from proceeding against your orator in the said action at law for the recovery of said money, and that all the defendants may be restrained from commencing any action or actions against your orator for the recovery of the said sum of $6,700.00 *dollars* or touching any matters or things aforesaid, and that your orator may have such other and further relief in the premises as equity may require and to your honor shall seem meet.

THE BANK OF BRITISH NORTH AMERICA,
By its agent in Chicago, H. M. BREEDON.

BOUTELL, WATERMAN & BOUTELL, *Solicitors.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Henry M. Breedon, being duly sworn, on oath says that he is the manager at Chicago of the said Bank of British North America, the complainant, and that said complainant has exhibited its bill of interpleader against the defendants, George M. Barber and James B. White, named in the foregoing bill, without any fraud or collusion between it or any of its officers or agents and the said defendants or any or either of them, and has not exhibited its said bill at the request of the said defendants or either of them, and further
9 states that it has exhibited its said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding or threaten to proceed at law for the recovery of the fund mentioned in said bill, and further states that he has heard read the foregoing bill and knows the contents thereof, and that the matters and things therein contained are true of his own knowledge, except those things stated upon information and belief, and those he believes to be true.

HENRY M. BREEDON.

Subscribed and sworn to before me this 24th day of July, A. D. 1883.

[NOTARIAL SEAL.] ARBA N. WATERMAN,
Notary Public.

Summons.

STATE OF ILLINOIS, } ss:
County of Cook, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon George M. Barber and James B. White, if they shall be found in your county, personally to be

and appear before the circuit court of Cock county on the first day of the term thereof to be holden at the court-house, in Chicago, in said Cook county, on the third Monday of August, A. D. 1883, to answer unto the Bank of British North America, a corporation duly organized & existing under the laws of the Kingdom of Britain, in its certain bill of complaint filed in said court on the chancery side thereof; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 24th day of July, A. D. 1883.

[SEAL.] JACOB GROSS, *Clerk.*

Endorsed.

Served this writ on the within-named defendant, George M. Barber, by leaving a copy thereof with him the 25th day of July, 1883; other named defendant not found in my county.

SETH F. HANCHETT, *Sheriff.*
By D. W. NICKERSON, *Deputy.*

And thereupon, to wit, on the 3d day of September, 1883, there was filed in said cause a certain appearance in words and figures following, to wit:

Bill of Interpleader.

STATE OF ILLINOIS, } *ss:*
Cook County, }

In the Circuit Court of said County.

THE BANK OF BRITISH NORTH AMERICA
vs.
JAMES B. WHITE *et al.*

We hereby enter our appearance as solicitors for George M. Barber, one of the defendants in the above-entitled suit.

DENT & BLACK,
Solicitors for George M. Barber.

And thereupon, to wit, on the 3d day of December, 1883, there was filed in said cause a certain appearance in words and figures following, to wit:

Bill.

STATE OF ILLINOIS, *Cook County:*

In Circuit Court.

BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER & JAMES B. WHITE.

We hereby enter the appearance of James B. White, one of the above-named defendants.

STILES & LEWIS, *Solicitors.*

And thereupon, to wit, on the 12th day of December, 1883, there was filed in said cause a certain answer in words and figures following, to wit:

Bill.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court.

THE BANK OF BRITISH NORTH AMERICA

vs.

GEORGE M. BARBER & JAMES B. WHITE.

The separate answer of James B. White, one of the defendants
12 to the bill of complaint of the Bank of British North America, complainant.

This defendant, reserving all benefit of exception to said bill of complaint, for answer thereto says that he admits that said complainant has on deposit in its office in Chicago the sum of sixty-seven hundred dollars standing to the credit of the defendant, George M. Barber, and this defendant says that said sixty-seven hundred dollars is part of a larger sum of money placed by this defendant in the hands of said Barber to be used by said Barber as margins in gambling contracts which said Barber was to make for this defendant on the board of trade in Chicago; that said Barber, in pursuance of such employment by this defendant, in the months of April, May, and June, A. D. 1882, made certain gambling contracts with certain members of said board of trade, which contracts were ostensible for the sale of certain quantities of wheat by said Barber to said members, to be delivered at any time in July, A. D. 1882, at the option of the pretended purchaser, but really said pretended contracts were a mere form and cover, and the real intention of all parties was to settle said pretended contracts by the payment of the difference between the price for which said wheat was sold and the market price of the same when delivery thereof should be called.

And this defendant further says that said Barber took sixty-seven hundred dollars of the money of this defendant so placed in
13 his hands as aforesaid and deposited the same with the said Merchants' Bank of Canada as security for certain of said pretended contracts, which is the same sixty-seven hundred dollars turned over to said complainant by said Merchants' Bank of Canada, and that while said money was still in the possession of complainant, to wit, on April 2nd, 1883, this defendant notified both said complainant and said Barber not to pay the same to any one but this defendant.

And this defendant, further answering, admits that he claims said money and that he has commenced a suit at law against said complainant for the recovery thereof, as stated in said bill.

And this defendant, further answering, says that he does not know what claim said Barber makes to said money, and that he has no knowledge, information, or belief respecting the allegations of said bill not hereinbefore expressly referred to.

All which matters and things this defendant is ready to maintain and prove as this honorable court shall direct, and prays that said money may be adjudged to him and such proceedings had as to equity appertain.

JAMES B. WHITE,
By STILES & LEWIS,
His Solicitors.

And thereupon, to wit, on the 7th day of January, 1884, certain proceedings were had and entered of record in said cause in words and figures following, to wit:

14 *Bill.*

THE BANK OF BRITISH NORTH AMERICA
v.
GEORGE M. BARBER *et al.* } 45394. 2252.

It appearing to the court that the appearance of the said defendant, George M. Barber, was entered herein on the third day of September, A. D. 1883—

On motion of solicitors for the complainant, it is ordered that the said defendant plead, answer, or demur to the bill of complaint in this cause instanter.

And said defendant, though solemnly called in open court, came not, but made default. Whereupon, on motion, is ordered that the complainant's bill of complaint be, and it hereby is, taken as confessed by said defendant, George M. Barber.

And thereupon, to wit, on the 11th day of January, 1884, there was filed in said cause a certain answer in words and figures following, to wit:

STATE OF ILLINOIS, } *ss:*
Cook County, }

In the Circuit Court of said County, in Chancery Sitting.

The answer of George M. Barber to the bill of complaint whereby the Bank of British North America has impleaded this respondent with James B. White.

This respondent, saving all benefit and advantage of exception, etc., says, for answer to so much and such parts of said bill as
15 he is advised it is necessary or material for him to answer, that it is true that the complainant is indebted to him in the sum of sixty-seven hundred dollars ($6,700), which said indebtedness is for moneys deposited by said respondent with said complainant as a bank doing business in the city of Chicago. This respondent opened an account with the complainant, and from time to time made deposits of money with the said bank and drew checks against the same,

and finally reduced the balance to the said sum of sixty-seven hundred dollars ($6,700), which was the amount due from complainant to this respondent on said account at the time of the filing of the bill of complaint herein.

At the beginning of the business between complainant and this defendant, to wit, on the tenth day of October, A. D. 1882, this respondent drew his check on another bank, and said check was placed to the credit of this respondent, to the amount of twenty-one thousand and fifty dollars ($21,050.00). Subsequently from time to time margin certificates and duplicates thereof in substance of the form hereinafter set forth were procured from said Bank of British North America by respondent, and when the transactions on account of which the said certificates were issued were closed the margins were liberated or signed down, and the moneys therein mentioned were thereupon credited to the respondent as a customer of said bank, and became subject with moneys previously credited by said
16 bank to this respondent, to be drawn out or checked against by respondent, and the sixty-seven hundred dollars ($6,700) of respondent's money remaining in said bank at the filing of the bill of complaint is the balance due respondent as the result of all the business between respondent and the said bank.

Respondent says that he was not the agent of the said White in depositing said moneys or any part thereof. The only relative that this respondent had to the said White was that respondent, as a commission merchant in the city of Chicago, made certain sales and purchases, respectively, of grain and pork for future delivery at the instance and request of the said White, this respondent being, as between himself and those with whom he made the contracts, respectively, responsible for the performance of the various contracts on his part. A large number of such transactions, both sales and purchases, occurred in the months of May, June, July, August, September, and October, A. D. 1882. Respondent was doing business on the Board of Trade of the City of Chicago, of which said board or association respondent was then and there a member, and said White was living at Fort Wayne, in the State of Indiana. The contracts in such cases were made with reference to the rules and regulations of the Board of Trade of the City of Chicago, and with reference to the usages of business on said board, and by said rules the persons with whom the respondent made such contracts were authorized to demand
17 margins and deposits as security for the performance of the several contracts on the part of respondent, and in various instances such demands were made, and it became necessary for respondent to make deposits for margins or security with reference to such contracts. The said rules provided that on time contracts purchasers should have the right to require of sellers as security ten per cent. margins, based upon the contract price of the property bought, and further security from time to time to the extent of any advance in the market value above said price; also that sellers should have the right to require as security from buyers ten per cent. margins on the contract price of the property sold, and in addition any difference that might exist or occur between the esti-

mated value of said property and the price of sale. The rules also provided that securities or margins should be deposited either with the treasurer of the said board of trade or with some bank duly authorized by the board of directors to receive such deposits. The said rules also prescribed the form of certificate having reference to such deposits, which form as prescribed and as the same was adopted by the said Merchants' Bank of Canada, and also by the complainant, was as follows:

No. —. $—.

BANK OF BRITISH NORTH AMERICA,
CHICAGO, —— —, 188–.

This day deposited with this bank — dollars as margin
18 or security on a contract or contracts between the depositor and —— ——, which amount is payable on the return of this certificate or its duplicate duly endorsed by both of the above-named parties or on the order of the president of the Board of Trade of the City of Chicago endorsed on either the original or duplicate hereof, as provided by the rules of said board of trade, under which the above-named deposit has been made.

—— ——, *Accou-tant.*
—— ——, *Agent.*

The said form as given is the form used by the complainant; the form used by the Merchants' Bank of Canada was the same, save in the name of the bank.

In accordance with the said rules the certificates showing the deposits were issued in duplicate in case of each deposit; one certificate was marked "original" and the other was marked "duplicate;" both were marked "not negotiable or transferable." The certificates, as will appear from the form, were not made with express reference to any particular contract, and accordingly under said rules the deposits, respectively, were subject to be treated as security for the faithful fulfilment of any of the contracts made between the parties to the certificates, respectively, during the time the deposit remained unpaid.

In and during the month of May, A. D. 1882, respondent, as commission merchant as aforesaid, did, at the instance and upon the request of the said James B. White, enter into and make con-
19 tracts for the sale and delivery by respondent to divers persons, members of the Board of Trade of the City of Chicago, of divers large quantities of number 2 spring wheat for delivery at seller's option during the month of July, A. D. 1882, at certain prices specified in the various contracts, which prices ranged from one dollar and twenty-two and one-half cents per bushel to one dollar and twenty-five and one-eight- cents per bushel, which wheat was to be delivered in lots of 5,000 bushels, respectively, but the said James B. White did not put the respondent in funds to buy the wheat for delivery according to such contracts, respectively; and whilst respondent remained liable upon the contracts by which he became bound in the course of his dealings for said James B. White as

aforesaid, respondent was from time to time called upon to deposit margins on account of said contracts, respectively, and to secure the performance of such contracts on his part, respectively, respondent did, in accordance with the rules of the Board of Trade of the City of Chicago, and in compliance with his duties under said contracts, make deposits of money and procure certificates of such deposits from said Merchants' Bank of Canada. Among the certificates so procured by respondent were the following:

One for the sum of $250.00, reciting that respondent had deposited said sum in the said bank as margin or security on a contract or contracts between respondent and F. G. Logan.

20 Also another certificate of like tenor and effect and for a like amount.

Also another certificate of like tenor and effect and for a like amount, but referring to a deposit in said bank as margin or security on a contract or contracts between respondent and U. Busch & Co.

Also a like certificate, referring to a contract or contracts with the same parties as last mentioned, which certificate was for the sum of $500.

Also a like certificate, referring to the same parties as last mentioned, for $900.00.

Also a like certificate, referring, however, to a contract or contracts with H. G. Gaylord & Co., and for the sum of $400.00.

Also a like certificate for a like amount, but referring to a contract or contracts with Robert Lindblom & Co.

Also a like certificate for the sum of $500.00, referring, however, to a contract or contracts with F. D. Hinkley & Co.

Also a like certificate for the sum of $500.00, referring to a contract or contracts with J. Crighton & Co.

Also two like contracts, each for the sum of $750.00, referring to a contract or contracts with C. E. Foss & Co.

Also a like certificate for $1,250.00, referring to a contract or contracts with Pickering & Co.

The said certificates may have been adopted or assumed by the complainant as between itself and the said Merchants' Bank of Canada, and respondent supposes that they were so adopted

21 when the latter bank ceased to do business in the city of Chicago, which was in the fall of A. D., 1882.

The aforesaid contracts for the delivery during the month of July, 1882, of number 2 spring wheat were not performed on the part of the said James B. White. The moneys deposited as margins as aforesaid were furnished by respondent in large part from his own means and resources for the purpose of keeping the contracts open, as was desired by the said White; and respondent also, in order to avoid loss on the part of the said White and to protect the interests of the said White, made before the close of the said month of July, A. D. 1882, a tender of number 2 red winter wheat under the said contracts, which wheat was of greater intrinsic value, as respondent believed, than the said number 2 spring wheat; but the tender was rejected by the purchasers on the ground that the wheat tendered was not of the kind and grade contracted to be delivered, nor such as under the

rules of the said board of trade was necessary to be delivered. Thus matters stood at the close of the said month of July, A. D. 1882. The parties with whom the contracts had been made, and who had a right to call for delivery, made large claims for damages against respondent and insisted that the said tender was irregular and insufficient, and the said White desired respondent to object to the payment of such claims, and to reduce the same, if he could; and with this object in view respondent, at the instance of the said
22 White, filed a bill in chancery in the superior court of Cook county aforesaid on or about the 11th day of September, A. D. 1882, against the said Board of Trade of the City of Chicago, referring to some or all of the contracts for the delivery of number 2 spring wheat upon which respondent had become and remained liable in making trades at the instance of the said White as aforesaid. It was sought by said bill to impeach the regularity and fairness of an award or decision of a certain committee which had been appointed under the rules of the said Board of Trade of the City of Chicago for the purpose of determining the settlement price under contracts such as those which were so made by respondent for the delivery of number 2 spring wheat during the month of July, A. D. 1882, which said committees by their finding and report made on or about the 4th day of September, A. D. 1882, determined that such settlement price should be one dollar and thirty-five cents per bushel. It was also sought by said bill to restrain said board of trade from enforcing said award or disciplining respondent on account of non-compliance therewith, and an injunction was temporarily granted on said bill. Said award or finding made respondent liable to pay as damages to the parties with whom he had made said contracts the difference between the contract price and the said settlement price of one dollar and thirty-five cents per bushel, but
23 the said suit in chancery was afterwards found to be unavailing, and on consideration of the premises it was held and adjudged therein by the said superior court of Cook county that respondent was not entitled to any relief on account of any of the matters stated in said bill, which said bill was drawn up by counsel employed by the said James B. White, and said injunction was by order of said court dissolved on or about the 16th day of April, A. D. 1883; the said White chose to stake and did stake the result of his contest as to the correctness of the claim for damages on the result of said suit in chancery, knowing that if the injunction should be dissolved respondent would be required to settle on the basis of the award or finding of said committee, and with reference to said basis the said James B. White drew from respondent on or about the 30th day of October, A. D. 1882, $987.50 as an excess of moneys, including profits due him from respondent, after reserving enough to pay damages at said rate. Prior to said suit in chancery it was the right of said parties with whom respondent had entered into said contracts, respectively, to have the moneys deposited as margin or security under said contracts for delivery in July, A. D. 1882, of number 2 spring wheat paid over to such parties, respectively, on the order of the president of the board of trade, such parties, respectively,

holding a duplicate of such certificates, respectively; and
24 respondent also, on making default as to such delivery, became amenable to discipline under the said rules of the said board of trade for not complying with the terms of such contracts, respectively. One of said rules provided that when any member of the association failed to comply promptly with the terms of any business contract or obligation and failed to equitably and satisfactorily adjust and settle the same he should, upon admission or proof of such delinquency before the board of directors, be by them suspended from all privileges of the association until all his outstanding obligations to members of the board of trade should be adjusted and settled, etc., as by the rules of the said board of trade when produced will more fully appear, and your orator makes reference to such rules and asks to be allowed to produce the same on the hearing. The parties who were entitled to delivery of the wheat under the said contract for delivery in July, A. D. 1882, were by said rules entitled to settlement with this respondent at the average market price of the commodity on the day of the maturity of the contracts, to wit, on the 31st day of July, A. D. 1882, and the damages or loss due to such parties, the purchasers by reason of the required settlement, became thereupon immediately due and payable by respondent to said purchasers, but the payment was delayed because of difference of opinion as to the amount of damages and in order to
25 enable the said James B. White to obtain a reduction of the damages if possible, and this was the object of the aforesaid suit in chancery so brought against the said board of trade.

It was also, under the said rules, the right of the said purchasers, after a failure for three business days succeeding the maturity of said contracts, to cause to be submitted to a select committee of three disinterested persons, members of the said board of trade, to be appointed by the president of the said board, any dispute between respondent and such purchasers, respectively, with reference to any deposit of moneys, as aforesaid, applicable to such contracts, respectively, and the decision of a majority of said committee reported to the said president in writing would have determined in what manner and to whom the deposits, respectively, should be paid, either in whole or in part, and thereupon the said president would have been authorized by the said rules to endorse on either the original or duplicate certificate of any such deposit an order for the payment of such deposit, in accordance with the decision of said committee, which order would have been a sufficient warrant to the complainant, by whom the certificates of deposit were issued as aforesaid, to pay the money in accordance with such order; but action before the board of trade as against respondent was postponed because of said injunction, and the certificates of deposit for margin and se-
26 curity so issued by said Merchants' Bank of Canada having reference to contracts for such wheat were held over and undisturbed in view of said injunction, but especially after the dissolution of said injunction the payment of margins or security moneys represented by such certificates was subject to be enforced under said rules of the said board of trade, and this respondent became and was

in danger of being suspended from the privileges of the association because of the non-settlement of the aforesaid contracts, respectively; of all of which facts the said James B. White had due notice, and yet he, the said James B. White, failed to protect respondent or give him any guarantee for his protection.

The liability to suspension from membership — the board of trade was one of great consequence to respondent in a monetary point of view, as well as with reference to his standing and reputation as a merchant, for such suspension would have operated as practically a forfeiture of respondent's membership. It would have been equivalent to a forfeiture as long as the particular contracts remained unsettled. The fee for membership in the association was and is fixed by the rules of the said board at $10,000.00, and any permanent suspension of respondent from the privileges of the association would have caused a loss to respondent of even a greater sum than $10,000.00, because it would have interfered with his livelihood and busi-
27 ness. In this situation of affairs respondent could not, consistently with his rights or duties as a member of said association, defer an adjustment or settlement of the contracts aforesaid any longer than was necessary to determine what he would, under the rules of the association, be required to do in respect to such settlement. In order to accommodate the said White as far as possible respondent did delay making the settlements until after complaint was made against him before the board of directors of the said board of trade in pursuance of the rules of the said board so authorizing the suspension of a member, and respondent allowed the said complaint to proceed to a hearing, at which hearing respondent attempted to make defense as to one of the said contracts, among other matters of defense relied on, a tender of number 2 red winter wheat as aforesaid, but the board of directors of the said board of trade ruled against respondent and was about to direct his suspension from membership unless he made settlement.

And thereupon, to wit, on or about the 24th day of April, A. D. 1883, respondent did settle such of the aforesaid contracts as were then outstanding, making such settlement in accordance with the rules of said board of trade, and on making such settlement the deposits for margins and security pertaining in whole or in part to said contracts were liberated or signed down, and on the re-
28 turn to the complainant of the original margin certificates so issued by said Merchants' Bank of Canada, the said certificates being duly indorsed to complainant, gave respondent credit on his account as a depositor in complainant's bank for said moneys.

Respondent further says that he was well entitled to make a settlement as aforesaid, and was obliged to do so as a member of the Board of Trade of the City of Chicago and according to the law of the land.

He further says that the said James B. White was not, in law or in equity, entitled to ask this respondent to refund any of the moneys paid out by respondent on account on the said contracts which were so entered into by respondent at the instance of the said White, nor was the said White in any way entitled to reclaim the margins and

deposits which were put up by respondent with reference to the said contracts, respectively, but respondent had full right to the said margins and deposit moneys when he settled the contracts with the persons with whom the same were made as aforesaid.

Respondent further says that he was not nor is he in any manner indebted to the said James B. White, and that the sum of $6,700.00 referred to in the bill of complaint herein is justly due to this respondent from the said complainant. It is the money of respondent held on deposit by said complainant for this respondent, and not the money of the said White, nor has the said White any
29 interest therein or any equitable right thereto.

Respondent has heard that the said James B. White, on account of the market having gone against him in respect to the number 2 spring wheat so sold for delivery in Chicago, in the month of July, A. D. 1882, or because the settlement price aforesaid was fixed higher than the said James B. White thought the same ought to be, has signified that he would attempt to revoke the authority of this respondent to close the contracts made for him by this respondent as to such grain or to adopt such settlement price in closing the same, but respondent says that the said James B. White caused this respondent to make such contracts, and to become bound for the performance thereof as aforesaid, and made it necessary for respondent to put up margins and security, and thus placed it out of the power of this respondent to control such margins and security in any way other than according to the rules of the Board of Trade of the City of Chicago, and also so involved respondent in causing him to become amenable to discipline by or suspension or expulsion from the said board of trade; that the said James B. White could not, either legally or equitably, revoke the authority of this respondent to make settlement of said contracts or pay over said moneys when it became necessary to settle such contracts.

Respondent believes that the said contracts or trades, with reference to which the said James B. White objected to making
30 settlement by respondent, were legal, and that the provisions of the rules of the said board of trade applicable thereto were rightful and were binding upon respondent and were necessary and proper to be considered with reference to the duties, as well as the rights of this respondent, as between himself and the other contracting parties, and also as between himself and the said James B. White, but respondent says that even if said contracts or trades had been illegal, or if any of the provisions of the said rules operated harshly, or in the practical working of matters caused enhancement of the amount of damages necessary to be paid in settlement of the said contracts or trades, yet this respondent was not only justified in discharging his duty as one of the contracting parties towards the contractors, his fellow-members of the said board of trade, but was also justified in observing the rules of the said board of trade, and in making payment in discharge of his obligations under the several contracts, as he did, though compulsorily, as above explained, because of his desire to protect the interests of the said James B. White, so far as the said White did ever put the respondent

in funds to protect the interests of the said White under such contracts, or to keep the contracts alive or open. Respondent claims that it was respondent's right to pay damages or differences on default under the contracts, respectively, when such damages became due according to the rules of the said
31 Board of Trade of the City of Chicago. This right inured to this respondent by direct authority from the said White when the said contracts or trades were made at his instance and the moneys were paid or advanced to this respondent, and thereafter there was no time when the said White had any right or authority to revoke the right or power to pay over the moneys when in the course of trade or in accordance with the rules of the said board of trade it became necessary to pay over such moneys in making settlement of or upon contracts or trades upon which the said White defaulted and which were necessary to be adjusted by this respondent because of his having become a party thereto at the instance of the said White.

Respondent further says that the said contracts or trades were but a small part of the dealings which were had by the said White through this respondent, as his commission merchant, with various members of the said board of trade, in many of which dealings, which were carried on contemporaneously with the dealings or trades above mentioned, there was profit to the said White, and the said White received from this respondent on account thereof large sums of money representing the profit; and respondent submits that it would be inequitable for the said White to claim that he should be relieved at the expense and to the loss and damage of this respondent from the effect of some of the contracts, to wit,
32 those made for the delivery of number 2 spring wheat in July, A. D. 1882, though remaining open at the close of said month, because of the non-fulfillment thereof on the part of the said White, while he, the said White, has been benefited by and has received profits from other trades or contracts of a similar character made for him by respondent, but which he chose to have settled and closed when the same resulted in profits which were to be paid the said White by respondent.

Wherefore respondent prays that the moneys in the hands of the said complainant referred to in the said bill of complaint be adjudged to belong to respondent, who deposited the same with the said complainant as aforesaid, and who is well entitled to receive the same, both on legal and equitable grounds; and respondent also prays to be allowed his costs in this behalf most wrongfully sustained, etc.

GEORGE M. BARBER.

DENT AND BLACK,
Solicitors and of Counsel for Def't, George M. Barber.

And thereupon, to wit, on the 17th day of January, 1884, two certain replications were filed of record in said cause; which said replications were in words and figures following, to wit:

Replication to James B. White.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County. In Chancery.

33 BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER & JAMES B. WHITE.

The replication of the Bank of British North America, complainant, to the answer of James B. White, one of the defendants in the above-entitled cause.

This complainant, saving and reserving unto itself all right of exception to the manifold errors and inconsistencies of said answer, for replication thereunto, says that its said bill is true, certain, and sufficient in law to be answered unto by said defendant, but that said answer is untrue, uncertain, and insufficient in law to be replied unto by this complainant, without this, that any matters and things in said answer stated sufficient in law to be replied unto, confessed and avoided, traversed and denied, are true.

All which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed, &c.

BOUTELL, WATERMAN & BOUTELL,
Attorneys for Complainant.

Replication to Barber.

STATE OF ILLINOIS, } ss:
County of Cook, }

34 Circuit Court of Cook County. In Chancery.

BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER & JAMES B. WHITE.

The replication of the Bank of British North America, complainant, to the answer of George M. Barber, one of the defendants in the above-entitled suit.

This complainant, saving and reserving unto itself all right of exception to the manifold errors and inconsistencies of said answer, for replication thereunto, says that its said bill is true, certain, and sufficient in law to be answered unto by said defendant, but that said answer is untrue, uncertain, and insufficient in law to be re-

plied unto by this complainant, without this, that any matters and things in said answer stated sufficient in law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays *and* as in and by its said bill it has already prayed, &c.

BOUTELL, WATERMAN & BOUTELL,
Attorneys for Complainant.

And thereupon, to wit, on the 18th day of January, 1884,
35 there was filed in said cause a certain petition for removal to
— Federal court; also certain proceedings were had and entered of record; also a certain bond was filed in said cause; which petition, proceedings, and bond are in words and figures following, to wit:

Petition.

Bill of Interpleader.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of Cook County, Illinois. December Term, A. D. 1883. In Chancery.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE.

Petition for removal to the circuit court of the United States, northern district of Illinois.

Your petitioner, George M. Barber, respectfully shows to this honorable court that the matter in dispute in the above-entitled suit exceeds, exclusive of costs, the sum of five hundred dollars.

That the controversy in said suit is between citizens of different States—that is to say, the bill of interpleader in said suit was filed by the Bank of British North America, which said bank was, at the commencement of this suit and still is, a subject of the Kingdom of Great Britain and Ireland, by which said bill the defendants, who were, at the commencement of the suit and still are, citizens of
36. different States, were required to interplead as to their respective claims to the moneys mentioned in the bill.

That your petitioner, one of the defendants, was, at the time of the commencement of this suit and still is, a citizen of the State of Illinois; that James R. White, the other of said defendants, was then and still is a citizen of the State of Indiana; that the said defendants have answered in said cause, and that the controversy to be decided under said answers is between said defendants.

And your petitioner further shows that this petition is filed at the term at which said cause could be first heard and before the trial thereof, and said cause was not subject to be tried before the present term of this court.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for northern district of Illinois; and he will every pray.

37 GEORGE M. BARBER.

STATE OF ILLINOIS, } ss:
Cook County, }

George M. Barber, being duly sworn, *and* says that he has read the foregoing petition by him subscribed and knows the contents thereof.

And he further says that the statements and allegations therein contained are true as he verily believes.

GEORGE M. BARBER.

Subscribed and sworn to before me this twelfth day of January, A. D. 1884.

[NOTARIAL SEAL.] ORSON SMITH,
Notary Public.

Order.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } 45394, 2252.

Bill.

On motion of Mess. Dent and Black, it is ordered that leave be, and it hereby is, granted said defendant, George M. Barber, to file herein his petition and bond for the removal into the United States circuit court for the northern district of Illinois.

Bond.

Know all men by these presents that we, George M. Barber,
38 as principal, and Charles O. Gregg, as surety, are hereby held, and firmly bound unto the Bank of British North America and James B. White, severally and respectively, in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if George M. Barber shall enter and file, or cause to be entered and filed, in the next circuit court of the United States in and for the northern district of Illinois, on the first day of its session, copies of all process, pleadings,

depositions, testimony, and other proceedings in a certain suit or action now pending in the circuit court of Cook county, State of Illinois, in which the Bank of British North America is plaintiff and George M. Barber and James B. White are defendants, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise in force.

Chicago, January 11th, A. D. 1884.

GEORGE M. BARBER. [SEAL.]
CHARLES O. GREGG. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, Charles O. Gregg, of said county, the surety named in the
39 foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Illinois and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Illinois liable to execution of the value of more than five hundred dollars.

CHARLES O. GREGG.

Subscribed and sworn to before me this twelfth day of January, A. D. 1884.

[NOTARIAL SEAL.] ORSON SMITH,
Notary Public.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

I, Jacob Gross, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of a record in a certain cause lately pending in said court, on the chancery side thereof, between the Bank of British North America, complainant, and George M. Barber *et al.*, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 22nd day of January, A. D. 1884.

[SEAL.] JACOB GROSS, *Clerk.*

40 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Jno. G. Rogers, presiding judge of the circuit court of Cook county, in the State of Illinois, hereby certify that Jacob Gross, who signed the above certificate, was, at the time of signing the same and is now, clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 22nd day of January, A. D. 1884.

JNO. G. ROGERS, [SEAL.]
Judge of the Circuit Court of Cook County.

Endorsed: Filed Jan'y 23, 1884. Wm. H. Bradley, clerk.

41 Afterwards, to wit, on the twenty-sixth day of January, 1884, in the December term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, are the following entries:

Order.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

On motion of complainant, an affidavit of non-collusion having been filed and the parties defendant having been duly notified, it is ordered that an injunction issue pursuant to the prayer of the bill of interpleader in this cause upon the complainant paying into the hands of the clerk of this court the sum of sixty-seven hundred dollars mentioned in the said bill.

Order.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

This cause coming on to be heard upon the bill of interpleader filed therein, the answers of the defendants and the replica-
42 tion thereto, and the court having heard the arguments of the counsel for the respective parties, and upon consideration thereof, it is ordered, adjudged, and decreed that the said bill of interpleader is properly filed, and that the defendants do interplead and settle the matters in controversy in this suit between themselves.

And it is further ordered, adjudged, and decreed that the complainant be dismissed with his costs of this suit up to this time, to be taxed.

Afterwards, to wit, on the twenty-eighth day of January, A. D. 1884, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the U. S. Circuit Court, Northern District of Illinois.

BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

It is agreed by the parties hereto that the moneys mentioned in the bill may remain in the hands of the complainant until the final

disposition of this cause, subject, however, to like order by the court, as if the money were paid into the registry of the court or to the clerk.

43 Jan. 26, '84.

STILES, LEWIS & PALMER,
For Jas. B. White.
DENT & BLACK, *For George M. Barber.*
BOUTELL, WATERMAN & BOUTELL,
Sol'rs for Complainant.

Endorsed: Filed Jan'y 28, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-ninth day of May, in the adjourned May term of said court, A. D. 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, are the following entries, to wit:

Order.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

This cause came on to be further heard at this term after the defendants had interpleaded and set forth their respective claims to the money in controversy, and was argued by counsel; and upon consideration thereof it was ordered, adjudged, and decreed as follows, namely: That the said Bank of British North America

44 is entitled to its further costs herein expended since the entry of the order of January twenty-sixth, 1884, and the costs of said Bank of British North America allowed to it by said order of January twenty-sixth, 1884, as well as the costs allowed by this present order, the whole costs amounting to forty-eight dollars and fifty cents ($48.50), and to be paid out of the fund of sixty-seven hundred dollars ($6,700.00) yet remaining as by stipulation in the custody of the said Bank of British North America, and the residue of the said funds, after the reservation of such costs, shall be paid by said Bank of British North America into this court.

And afterwards, on this day, it appearing that the said Bank of British North America has paid into this court the sum of sixty-six hundred and fifty-one dollars and fifty cents ($6,651.50), being the residue of the funds aforesaid—

It is further ordered, adjudged, and decreed that the injunction heretofore ordered herein be, and the same is, made perpetual, and that the said Bank of British North America be finally dismissed from the litigation as well in the suit at law commenced against it by the said James B. White as in the interpleader and controversy herein between the said James B. White and George M. Barber.

Decree.

THE BANK OF BRITISH NORTH AMERICA
vs.
GEORGE M. BARBER and JAMES B. WHITE. } In Chancery.

45 In the Matter of the Interpleader between GEORGE M. BARBER and JAMES B. WHITE, as defendants in the bill filed against them by the Bank of British North America.

This cause came on to be further heard at this term after the said Bank of British North America had been dismissed, the said James B. White and George M. Barber having previously interpleaded and set forth their respective claims to the money in controversy, and was argued by counsel, and upon consideration thereof it was ordered, adjudged, and decreed as follows, namely:

That the said George M. Barber was and is entitled to the sum of sixty-seven hundred dollars ($6,700.00) referred to in the bill of the said Bank of British North America, and is entitled to receive the sum of money deposited in this court by the Bank of British North America on account of the said sum of sixty-seven hundred dollars ($6,700.00), and that the said James B. White has no equitable title to the said sum or any part thereof as against the said George M. Barber, and that said money be paid over to said George M. Barber or his solicitors, and that the said George M. Barber recover of the said James B. White the costs reserved out of the said sum of sixty-seven hundred dollars ($6,700.00) by the said Bank of British North America, which said costs were taxed at forty-eight dollars and fifty cents; and that the said George M. Barber do also recover of the said James B. White the further costs of said George M. Barber herein expended, taxed at the sum of —, and that the said
46 George M. Barber have execution for all the costs aforesaid so allowed him.

And thereupon said James B. White prays an appeal to the Supreme Court of the United States, which is allowed on his filing a bond herein, conditioned according to the law and practice, with security, to be approved by the court, in the penal sum of two thousand dollars, within thirty days.

On the same day, to wit, on the twenty-ninth day of May, 1884, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court for the Northern District of Illinois. In Chancery.

THE BANK OF BRITISH NORTH AMERICA
vs.
JAMES B. WHITE & GEORGE M. BARBER.

It is hereby agreed by the defendants that the testimony taken in the case of said James B. White against said George M. Barber,

brought in said court, upon the law side thereof, & in which final judgment was rendered this day for the defendant, shall be used & introduced by the party taking the same as his testimony on
47 the trial of this cause; & each of said parties has also taken further testimony by agreement, which each is also to have the right to read upon said trial, all of which shall be read as evidence on said trial, & no objection shall be made thereto on account of its informality or the informal manner in which the same has been taken, but the right to make & insist on all substantial objections on account of the incompetency or immateriality of said testimony is reserved to each of said parties.

The pleadings and orders of this court, on the law side thereof, and the final judgment in said case, at law, of James B. White *vs.* George M. Barber were read in evidence herein on the part of said George M. Barber, and the same are to be embraced in the transcript, if any be made up, for the Supreme Court.

Chicago, May 27, 1884.

L. M. NINDE,
Counsel for J. B. White.
DENT & BLACK,
Of Counsel for Geo. M. Barber.

Endorsed: Filed May 29, 1884. Wm. H. Bradley, clerk.

48 In the United States Circuit Court for the Northern District of Illinois.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

In assumpsit.

Be it remembered that the above-entitled cause having come on for trial upon the 4th day of February, A. D. 1884, before the Hon. Henry W. Blodgett, judge of said court, and a jury duly empanneled and sworn herein, the plaintiff, to maintain the issues on his part, introduced the following evidence—that is to say:

JAMES B. WHITE, the plaintiff, who, having been first duly sworn as a witness in his own behalf, was examined in chief by Mr. STILES, and testified as follows:

Q. Mr. White, you are the plaintiff in this case?
A. Yes, sir.
Q. State whether on or about the date or on the date which this paper bears you served a copy of it on Mr. Barber (showing witness a paper)?
A. Yes, sir.

The COURT: What was the date?
Mr. STILES: April 2nd, 1883.
The WITNESS: That is the paper.

Q. This is a copy?
A. That is a copy of the paper.

Q. What did you do with the original, of which this is a copy?

A. I left one with Mr. Barber.

49 Q. Was any one with you at the time?

A. Yes, sir.

Q. Who?

A. Gen. McArthur was with me.

Counsel for plaintiff reads in evidence paper addressed to G. M. Barber, Esq., dated Chicago, April 2nd, 1883, signed James B. White, as follows:

"EXHIBIT No. 1."

"To G. M. Barber, Esq.:

"In a statement made by you, dated October 30th, 1882, of deals made on my account on the board of trade, Chicago, you acknowledge a balance in your hands of $11,412.50 in my favor, being, so the statement says, the difference between price you — 100 M — July spring wheat for me, and the selling price of same as fixed by the board of trade (1.35), including your commissions of ¼c. Now, you are hereby notified that I claim all contracts for sale of said wheat to be illegal & void, and forbid you to pay over any part of said money or balance to any one; and I further demand the immediate payment thereof to myself.

"Dated Chicago, April 2, 1883.

"JAMES B. WHITE."

Q. Did Mr. Barber read that paper?

A. Yes, sir; he read it.

Q. When he had read it, what did he say, if anything?

50 A. Well, he said he could not pay that money over.

Q. Was anything said about that money being or not being the balance in his hands?

A JUROR: He said Mr. Barber could not pay it over. I ask to whom he could not pay it over?

A. To me; he said he could not pay that money to me; said, "I cannot pay that over to you; you hav-n't got that."

Mr. STILES: Was anything further said?

A. Yes, sir. Well, said I, "Yes, you can; I demand the money, and I ought to have it." He said, "You don't mean that actually?" Says I, "Yes, I do; I want that money; it is mine, and I should have it." Well, he smiled and said, "No; he could not do that;" and he walked into the board of trade.

Q. Was that about all that was said?

A. That was about the substance of what was said at that time.

Q. Now, how did this $11,000 and odd dollars there get into the hands of Barber?

A. Well, sir, that is my dealings, extending away back a good many years, with Mr. Barber.

Q. When did you first make Barber's acquaintance?

A. In 1879; December, 1879.

Q. Had you had an acquaintance with him, by letter or otherwise, before you met him in person?

51 A. No, sir; I was introduced to him by Mr. Maltman, and agent that I had in Chicago.

Q. What occurred between you and Barber at that time?

A. At that time—it was in the first of December, 1879—I came up to see him about 100,000 bushels of corn I had sold.

Q. How had you sold it?

A. Or bought, rather; I had bought it for December delivery.

Q. How had you bought it—in what manner?

A. I bought it through Mr. Maltman and Barber—that is, I had told Mr. Maltman or wrote him some time previously that I wanted to do some trading on the board of trade specially; that I believed I could make some money if I had a fair show—that is, providing he would trade with responsible parties; that if I made my money that I would be sure to get it; that I had, at least, heard that there were a good many parties even made money and did not get it.

Q. This is what you told Maltman?

A. That is what I wrote to Maltman—that if he could place a trade with a responsible person I would not hesitate to trade. He wrote me he had a good party that was perfectly responsible, and he could place my trades safely with them. I then commenced buying December corn.

52 Q. Who was the party that he said was perfectly responsible?

A. Mr. Barber.

Q. This defendant?

A. Yes, sir. He lived out in his neighborhood, and he knew him very well; he was perfectly responsible, and I sent Mr. Maltman the orders to buy December corn. I think it was in September I sent him those—September and October. I had bought 100,000 bushels at one time and another, and the market went against me about $4,500 or $4,200—something along there—and the payment of the deal had to be secured at that time—about the 1st of December—and I came up to see about it.

Q. Is that the time that you saw Barber?

A. That is the time that Mr. Maltman took me up and introduced me to Mr. Barber.

Q. What occurred between you and Barber at that time?

A. Well, he took me into the board of trade amongst the members the first time I had been there at that time, and we talked about dealing in general. I remarked to him I had got on the wrong side this time. He said, Yes, it was rather a heavy loss. Well, I said,

53 "That is true; however, I am not afraid to lose—that is, I am not afraid to gamble with those fellows, just so I get a fair show." Says I, "I propose to get my money back where I lose it, and I will try it again." Says I, Will you have to close the deal to-day." He said, "Yes, we will have to close it to-day."

Q. How large was your loss at that time?

A. The loss was about $4,500.

Q. Did you pay it like a little man?

A. Yes, sir; I paid it right up.

Q. What occurred after that?

A. I then had a deal in pork—a thousand barrels of pork I had bought.

Q. Before you get to that let me ask you if any further conversations occurred between you?

A. Well, Mr. Barber said, "Certainly it is hazardous trading, but," says he, "I get along well enough; I have been engaged in it now for about three years and I am making money." He says, "Of course there — a good many parties here that are not responsible." Says I, "My deals—I want them placed where they will be responsible, so that if I do make it that I will get it, because I am sure to pay if I lost. I have heard so much reported about these fellows chiseling people out of their money when they had made it that I don't want that; I want to get it if I make it." Well, says he, "That don't pay; I know those fellows; I know — pretty well; I have been
54 here long enough to know them, and there is lots of them I would not trust over night; but," says he, "I will place your deals where they will pay."

Q. Your first deal was in corn?

A. Yes, sir.

Q. And that resulted in a loss of $4,500?

A. Somewhere like it; the statement will show.

Q. Was any corn delivered on either side?

A. No, sir; he closed the deal.

Q. Was anything said about that between you and Barber, as to whether there should be a delivery or not? What else occurred between you and Mr. Barber?

A. I told him, "Mr. Barber, you know, of course, my business in Fort Wayne—at least I am not engaged in this kind of business. My business there is merchandizing and general trading. Now, of course, I don't want to be identified in this thing. I don't want to be known in this thing, because extensive trading as I have through the markets of the country it has a tendency to affect my credit, and would bring it in suspicion, and I want this thing kept quiet." Says he, "I understand that; Mr. Maltman told me all about your business." Says he, "That will be all right; you need not be uneasy about any exposure on that head." He says, "A great deal of trading is done just in that way with parties that want it kept to themselves." Says I, "Of course I don't want none of this property. I know it is simply gambling, but I am not afraid to gamble;
55 all I want is a fair show."

Q. You said that to him?

A. Yes, sir; right square to him.

Q. What did he say?

A. He said that was all right enough. He says, "That is the way it is looked upon." But, he says, "I am doing well enough at it. I don't let my deals run long; I close them every night generally; consequently, I run a scalping trade back and forward, and make some money."

A. Well?

A. That was the substance of our conversation.

Q. When, after that, did you have any transactions through Barber?

A. I had several transactions, and running right along after that time into the spring of 1880. Then I was dealing pretty heavily in wheat; got in on the wheat deal this time. I made up my mind that there was money in selling wheat. I thought the market was declining. It was the time the Keen clique was here. The market was declining, and I commenced selling wheat.

Q. Through Barber?

A. Through Barber; yes, sir.

Q. Now, about what date was this that you have just commenced talking about, Mr. White?

A. This was about—well in January I came up and saw him.

Q. In January, 1880?

56 A. 1880. About the 16th of January I had telegraphed Maltman to sell 20,000 bushels of wheat, and I came up here about a day or two afterwards. I had a profit in it of about $400. I thought in place of taking the profit I would sell more. I sold more and the deal went against me about $2,000, and I paid it up. Then I got on the long side of wheat, as he calls it; commenced buying then at $1.26, and made during this operation, running up to about the 1st of March, made about $600 on that deal—the March wheat bought in January. In the first place, I had been selling March and lost; then I turned around and bought and made about $600; then it occurred to me that I had better commence selling wheat again, so I commenced selling wheat in March, 1880, and sold long with the market and made a great deal of money; for a few months made considerable money; recovered my losses; I think up to the last of March or middle of April I had recovered my losses and a little more, I believe, and at this time I commenced selling May wheat in April—about the 20th or 18th of April, 1880—

57 and all at once the May option or May deal, as they term it, took a sudden spurt up, and it was discovered that the Keen corner was combining to send May wheat up. Well, it did go up like fury and I happened to be on the wrong side, and I said to Mr. Barber—I was up here one of those days and it went about 5 or 6 cents against me; I had, I guess, about 100,000 bushels—and I said, "How about this trading? Is it so that there is no stopping a run or corner in this way?" It had gone up then some six or eight or ten cents a bushel, and the other option following it had not followed up. Well, he says, "They can run a corner between the months, but they have got to come pretty neat together at the end of the month; so you have got to margin up and hold good." "All right," says I; "I will margin up, but I don't want to be gouged."

Q. What is margining up?

A. Margining is to protect your deals, as they may term it, if it goes against you; but when it comes to a final settlement there has got to be a relative value between that deal and the other deals; but if there is not there is a corner; if there is a corner it is against the rules. "Suppose they have a corner, what then? how will you

settle it?" Well, he says, "We can default if we want to, but we don't want to do it, because it injures a person's reputation."
58 Says I, "I don't want to do that, either."

Q. What is defaulting?

A. Defaulting is simply not trading the trade. Then, says I, "How will they fix it in case of default?" Well, says he, "there will be a fine of about five cents, so it is better if there is only five or six cents difference in the corner and in the months succeeding; it is better to close the deal." Says I, "If that is all there is in it I will close it." So it transpired that at the end of May when this deal was consummated there was a difference between that and the month succeeding—that is, June—of about seven cents a bushel. Well, at that time the corner was not a weighty-matter corner; hence I told him to settle it up, and he did settle it up, and I lost about $8,000, I think, all together, but I done it because I did not consider the corner was so extremely severe, but he said the fine in not settling would be almost equal the amount in settling.

Q. You say you lost $8,000—you mean you paid it?

A. Paid it; yes; that was on the Keen deal, as they called it.

Q. During this time did you have talks with Barber as to the way in which business was to be done?

A. Yes, sir; I spoke to him about it—about the hazards of the game, as they call it—that it was rather hazardous business; as
59 I said, if a person struck the right side why there was no danger. Yes, he said, it was difficult to do it. A good many made money and a great many lost, and cited me to several individuals that had done very well, and he said he done very well himself, but done it more by scalping sales every day as he went along closing his deals; did not let them run against him.

Q. What is scalping deals, if you know?

A. Well, scalping is taking a little profit as it happens to stand on the turn of the market.

Q. Well, taking a profit how—by delivering goods?

A. No, sir; just buying and selling to your fellow-members—that is, they buy and sell on the profit of the market at the time.

Q. What was said, if anything, about your being in a condition to deliver the property when you had agreed to deliver it?

A. Oh, it was expressly stated that I wanted no property. He knew that. He said, "Certainly I know that I know your business. Mr. Maltman has told me all about you." And he said, "The deals, of course, we will just settle them on the margins on the profits—that is just the way it gives a profit or a loss." He says, "There wasn't one bushel in a thousand or a million," I think he said, that
60 was actual business there; he did not expect it—no one expected it.

Q. What do you mean by actual business?

A. Legitimate trading, he said; or, he says, it is all speculating.

Q. Did he define what legitimate trading was?

A. Yes, sir.

Q. What did he say it was?

A. Why, says I, Certainly I don't — no 100,000 bushels of wheat or 200 barrels of pork.

Q. You say he said there was not one bushel in a million that was legitimate trading?

A. Yes, sir.

Q. Did he explain to you so that you understood what legitimate trading was?

A. Yes, sir; he told me there was several houses handling the grain, but the most of them it is just trading on the market on the option. He said there are several legitimate houses that handled the property, sold it and handled it and delivered it.

Q. That is what he called legitimate trading.

A. Yes, sir; but he did not do that. He said he done no business of that kind, and he done no business for any one but me in this way except his own.

Q. Did he furnish you statements from time to time of his transactions on your account?

A. Yes, sir; every loss or profit I was furnished a statement of it.

Q. Have you got those statements here?

A. Yes, sir.

(Producing papers.)

61 Q. These are statements during the year 1879, or appear to be?

A. Yes, sir.

Q. Did you receive those from Barber?

A. Yes, sir; I received those statements from Barber.

Q. In what way—how?

A. Some of them I got direct from Mr. Barber and some from Mr. Maltman; he sometimes gave them to Mr. Maltman and Mr. Maltman would mail them to me.

Q. You have been shown what purports to be statements of transactions occurring between yourself and Barber closing up the year 1879?

A. Been shown them; yes.

Q. Those were all the statements that you received from Barber covering that period?

A. At that time—yes.

Q. Subsequently you received other statements, did you?

A. Yes, sir; in 1880, 1881, 1882, and 1883.

Q. These are the ones of 1880, are they?

(Referring to papers.)

A. Yes, sir; these are the 1880 statements, January, 1880, running along.

Q. Did you receive these in the same way from Mr. Barber?

A. Yes, sir; some direct and some is from Mr. Maltman.

Q. And here are statements covering the year 1881 (indicating)?

A. Yes, sir; 1881, up to December.

Q. And here is 1882 statements of Mr. Barber of the trans-

62 actions occurring during the year 1882 (indicating)?

A. Yes, sir.

Q. Now, if you can give a summary, Mr. White, from these memorandas of the transactions perhaps it will help us. In the year 1879 to what extent did you trade through Barber, and in what kind of articles?

Question withdrawn.

Recess.

After recess.

Q. Mr. White, I would like to have you explain briefly these bills. For instance, here is a bill among the list presented or statement presented to you by Mr. Barber, which reads as follows: "Chicago, January 22, 1880. A. S. Maltman, J. B. W." That means J. B. White, doesn't it?

A. Yes, sir.

Q. "In account with G. M. Barber, by profit 500. February pork, 13.45." What does that mean when you put it into English—500 barrels?

A. It means 500 barrels.

Q. What is February pork?

A. Well, it was to be delivered in that month.

Q. $13.45?

A. Yes, sir; that was the price it was either bought or sold at.

Q. Now, carried out here is 225; that is profit?

A. That is profit—225.

63 Q. Now, take, for instance, the bill in regard to wheat, "75 M." What is that?

A. 75,000 bushels.

Q. "March?"

A. March wheat.

Q. "119½ bought?"

A. Yes, sir; at 119.

Q. Sold 118; loss carried out, 7.50?

A. Yes, sir.

Q. Transactions shown in that way are in what lots?

A. Not less than 5,000 bushels.

Q. And they are described on the bills as "5 M?"

A. M stands for thousands.

Q. And in pork, generally, how?

A. Well, not less than 250 barrels at a time.

Q. Mr. Lewis suggests the multiple of 250 and the multiple of 5.

A. Yes, sir; 250 or 500, a thousand, 5,000.

Q. State whether on or about April, 1882, you had a settlement with Mr. Barber.

A. Yes, sir; I had a settlement with all the deals.

Q. I mean up to that time.

A. Up to that time—April 19th, I think it was.

Q. At that time state whether anything had been delivered or received; any commodities delivered by you or received by you.

A. No, sir; not a thing of any kind.

Q. State whether up to that time any suggestion or requirement on the part of Mr. Barber to deliver had ever been made.

64 A. No, sir. On the contrary, we talked that it was never expected to handle the property; merely to trade in the differences.

Q. At the time you settled all previous deals, about the 1st April, 1882—was it the last of April?

A. About the 19th of April.

Q. Well, how did you stand then?

A. I was in that April corner. Previous to that, in February, I was up here and had done some scalping that day—about probably 100,000 bushels of wheat, backwards and forwards—5,000, 20,000, or whatever may happen—and I made some money that day—probably about $1,000—on the scalping market, and I was about leaving to go to New York, and that I remarked to Mr. Barber, "Now, I would like to sell some wheat, but I am afraid of the corner." And says he, "No danger; you need not be afraid of no corner. There is no corner, you may depend on that, in this market."

Q. That was 1882?

A. 1882; and I remarked in St. Louis they had had a corner there, and they had had one in Milwaukee, and I think there will be one here. "No," he says, "you need not be afraid of one here." Then I says, "Sell me this 20,000 April wheat." He sold it at 1.19 cents, and I sold 20,000 the next day. When I got home — telegraphed

65 him to sell 20,000 more, and I went off to New York, and a few days developed the fact that there was a corner in April wheat. This was in February, and the corner run along and ran it up to 1.30 and back to 25 and clear up to $1.38. About April 19th I made up my mind there was going to be no relaxation of this corner and I might as well close it out; so I telegraphed Mr. Barber to close out my deal.

The COURT: That was 40,000?

A. No, sir; it was not 40; I only had 20 there. I had taken in 20,000 when I was in New York.

Mr. STILES: By that telegram?

A. Yes, sir; from New York; so it left 20,000 out; that left 20,000 open.

Q. On the 19th of April?

A. On the 19th of April.

Q. What did you do with that?

A. I ordered him to close the deal, and he closed the deal at $1.83. It involved a loss, with all my margins besides, about $800 in addition to that. I at once instructed Maltman to pay it.

The COURT: Do you say you close- it out?

A. I closed it out *of* a loss of $1.38. There was a loss, I think, of over $3,000.

Mr. DENT: What time was that?

A. That was about April 19th, 1882. I was going East at the time. There was one deal hung open until the last of April. I

66 thought the corner would be maintained through; consequently I closed them at a loss of something about $3,000.

Mr. STILES: If I understand you right you were out?

A. I was out then. There was a balance still owing Mr. Barber, and I told Mr. Maltman to pay it.

Q. Did he do so?

A. He done so. The margins were exhausted that I had here, and he drew for the balance, about $800, to close that deal; so then we were even.

Q. Now, then, we have got the deals all closed even?

A. All even up to April 19th, 1882.

Q. What then occurred between you and Barber in relation to any deals on the board?

A. Then I was in Washington city about the latter part of April, and telegraphed from ther- to sell July wheat.

Q. About what date do you say you telegraphed him?

A. The telegram was from Washington.

Q. This is the telegram from Washington, dated April 19th, 1882, "G. M. Barber, board of trade: Sell 10 July wheat; will be home on Saturday. J. B. White." What does 10 July wheat mean?

A. 10,000 July wheat.

Q. After that did you send more telegrams?

A. I think I sold some more from Washington. I am not
67 positive, but it runs in my mind that I did—10,000.

Mr. DENT: If you let Mr. White run over those telegrams they can all be read together.

Mr. STILES: All right. Suppose you do that. I read the first one. Go on with the next.

A. There is Washington again, April 22nd, "G. M. Barber: Sell 10 July wheat at opening; telegraph National Hotel." That is where I stopped. And then, "G. M. Barber, board of trade: Sell 10 July wheat at opening." That is from Fort Wayne. I had got home. That is April 27th.

The COURT: April 27th; and did you telegraph from Washington April 22d?

A. Yes, sir; and then there is Fort Wayne: "G. M. Barber: Sell 20,000 July wheat at opening." That is May the 1st. Then May the 4th again, myself to G. M. Barber from Fort Wayne, "Sell on call 20,000 July wheat."

Mr. STILES: But that is not embraced in this deal that we are talking about, is it?

A. No, sir; these deals were closed. Here is when these deals were closed again—some of them. At Fort Wayne, "G. M. Barber, board of trade: Cover the other 20 and resell it at ½ cent advance."

The COURT: What date is that?

A. This is May 6th. I had a profit in these deals, and I
68 wanted them covered—closed out.

Q. How much did you order covered?

A. "Cover the other 20,000 and resell at half cent advance."

Mr. STILES: That is, take your profit and sell it again?

A. Yes, yes; then there is Fort Wayne, "G. M. Barber, board of trade: If market touches 6¾ cents cover 50; reacts to 8½, resell it again." This May 6th. I had a profit in that, you understand; conse-

quently I wanted it stored and resold again and take another chance at it. Then there is, "G. M. Barber, board of trade: Sell at opening 30,000 July wheat." That is May 15th, also from Fort Wayne. Then there is May 17th to G. M. Barber.

The COURT: That means opening price—that "at opening?"

A. Yes, sir; at the opening price in the morning. This is May 17th, "G. M. Barber, board of trade: Sell 20,000 July wheat."

Mr. STILES: I notice you do not mention the price there.

A. No, sir.

Q. Let me ask you whether you had kept posted as far as you could upon the state of the market at that distance?

A. Oh, yes; I got telegrams occasionally, besides got a circular every morning; then we had a bucket-shop in Fort Wayne which kept us posted, too.

Q. They have got a bucket-shop there?

69 A. Yes, sir.

Q. How long has it been there?

A. Oh, it has been there for three years. We could tell any hour what the market was, or minute, almost. Then there is May 18, Fort Wayne again, "To G. M. Barber: Sell 10,000 July wheat and 10,000 July oats."

Q. Do the oats figure in this balance?

A. Well, they may, because I lost $2,000 on them in July. Then there is Fort Wayne, May 19th, "G. M. Barber, board of trade: If July touches 23 cents cover the last 30,000," meaning that would be a profit, of course; that is to cover the deal.

Q. Do you know whether it was covered or not?

A. Oh, I couldn't tell; I think it was. I am not sure.

Q. Without looking over these statements?

A. I could not tell without; no.

The COURT: You had been selling all this time?

A. I had been selling, yes; that would be buying; the word covered would be equivalent to buy; he understood that. Now, there is May 20th, Ft. Wayne again, "Cover corn at 71 cents and the last 50,000 wheat at 23 cents," meaning to buy. I had sold some corn at that time, 20,000 corn though the telegrams here don't show it; but I evidently had, because I had a corn deal.

The COURT: 50,000 bushels at what?

A. At 23 cents.

Mr. STILES: You mean at $1.23?

70 A. Yes, sir.

Q. You abbreviate it in that way?

A. Yes, sir; he knew what it meant—$1.23; that is what it is. May 26th, "G. M. Barber: Sell on call 20,000 July wheat." From Fort Wayne, that is. The next telegram is May 26th, "G. M. Barber: Purchase 40,000 July wheat, 24"—at 24 cents, $1.24—"and resell it at 4¾," meaning if it went up a little to resell again—take another trial at it. Then there is May 26th, "George M. Barber, board of trade: Cancel any orders that you have to buy or sell for the present." I suppose some of them were unexecuted, and I was hesitating what to do, I presume, when that went. Then there is May 27th, Fort

Wayne, "G. M. Barber: Buy at opening 10 August wheat and sell 10 July wheat." Then here is one from Valparaiso on June the 9th.

The COURT: The last was to buy 10 July?

A. To buy 10 August and sell 10 July. At that time they were running July up, and I supposed August would have to follow, and would if it had not been a corner.

Q. You were on your way to Chicago and got to Valparaiso?

A. Yes, sir; and at this time the market was pretty heavy against me, and Mr. Barber wanted money, and I was delayed at Valparaiso for some reason or other—the train was delayed, I think, on
71 reaching there—and I could not get here at the opening of the board, so I telegraphed from Valparaiso to A. S. Maltman, South Water street, June 9th. Mr. Maltman was communicating always with Mr. Barber, and I telegraphed from Valparaiso to A. S. Maltman, "Been delayed three hours; arrive in Chicago at 11 o'clock on exchange; tell Barber"—that is, so that he would not be uneasy; that I was coming with money. The deals had gone against me. Then there is Ft. Wayne, July 29th. There seems to be a skip here. I suppose there must be probably other telegrams. July 29, from Fort Wayne, "Board of trade, G. M. Barber: If July wheat touches $1.19 cover whole lot."

Mr. DENT: That is June 29th, I presume?

A. It says July. I thought maybe they had let the corner down, which they did sometimes.

Mr. STILES: It reads July.

A. I presume that is the way it was, thinking it might have let down at the end of the month; when they find that the corner has been so outrageously high they let it down; consequently I think that is the 29th—that is the way that reads. I think July 29th.

Q. What is the next?

A. The next is Fort Wayne, August 5th, "Board of trade, G. M. Barber: Don't cancel the July trades. My attorneys here believe the tender we made is good and can be enforced"—that is, we tendered them a red wheat in conformity with the rules of the
72 board of trade and they refused it.

Q. You do not know personally about that, do you, but only what Barber said about it?

A. Barber told me he did this. Barber told me he did. He said he delivered July red and they refused it.

Q. Go on.

A. "G. M. Barber, board of trade, Fort Wayne." This is the 9th and 1st—that is, the 9th month.

Q. That is after the trade; I don't care about that. You have read all the telegrams to the end?

A. Up to July, 1882.

Q. During the time these deals were running did you receive any letters from Barber?

A. Yes, sir; some letters; not a great many. I received the most from Mr. Maltman.

Q. Look at this bundle of letters (handing witness package of letters). You may look at each one briefly and see whether they were not received by you by mail from Mr. Barber?

A. Yes, sir; I have seen them all and received them all from Mr. Barber. They are his letters.

Q. Do you know his handwriting?

A. Yes, sir; I am familiar with it.

Q. Are those in his handwriting?

A. Yes, sir; I have sworn they are all except one from his clerk here; there is one from one of his clerks here.

Q. One from his clerk?

A. Yes, sir; the last one.

Q. Were they received about the time they bear date?

73 A. Yes, sir.

Q. By mail?

A. By mail.

Q. Did you come up here to Chicago about that time—the last of July?

A. Yes, sir; I came up on the last of July.

Q. What talk did you have with Barber?

A. And talked with Barber, yes.

Q. I will withdraw that question. Tell the jury whether you had any talks with Barber before this time named, the last of July, along while deals were running, say along through June, May and June, as to the way in which the business was to be conducted, and so on?

A. I had a great many conversations with him at different times as to the nature of the business.

Q. Do you recollect what those conversations were?

A. Yes, sir; one of them was—specially in that month of February, 1882, when I was up here.

Q. What was that?

A. I spoke to you about that to some extent, not all of it in full, but in regard to making those trades in April wheat, when he informed me that he did not think there was any corner in April wheat, and I was up from the fact that there was a corner scare in St. Louis and Milwaukee, and I did not want to be caught in the corner here. Well, he assured me that he believed that there would be no corner.

74 Q. Well, you have been over that?

A. Yes, sir.

Q. After that, did you have any conversation with him about the manner in which the business was done over there in relation to these deals?

A. No, sir; I wasn't up and seen him until July after that, but at that time we had quite a conversation as to the nature of the trade, the hazardness of the game, as we termed it; that I had been doing well enough lately—got on the right side, which I did on that particular deal.

Q. We will come directly to the time of the settlement, the 19th of April, 1882, whether up to that time any grain or other commodity

had been received or delivered to you or any demand upon you by Barber?

A. No, sir.

Q. You say there had not?

A. No, sir.

Q. Now, up to the time of the close of the July wheat deal had any demands been made upon you by Barber for the delivery of any wheat or corn or any other commodity?

A. No, sir.

Q. Had anything been said by him to you, in substance, that you must get ready to deliver, or that something must be done?

A. No, sir; on the contrary, he told me that there wasn't
75 one bushel, I think he said, in a million that was handled legitimately on the board of trade, and I said this is the biggest faro bank in the world.

Q. You said so?

A. Yes, sir; told him so. He said, "There is lots of them does nothing else." He said there is some legitimate trading—some of those heavy houses which receive grain actually, but the bulk of us don't do that; don't intend to—don't expect to; we simply trade on the differences. Well, I told him that was all I wanted to do; that the only object or anxiety always was to get on the right side of the deal, and I sometimes asked how he managed. He said he done *he said he done* very well; he simply scalped his deals—never let them run over night.

Q. Now, to go back a little. At the time you presented him this written demand, which I had this morning, in which you asked him to pay over about $11,000—odd dollars—was anything said by him at that time to the effect that he had already paid it over to anybody?

A. No, sir; not a word.

Q. Did he afterwards?

A. No, sir.

Q. There is a reference made in this written demand to a certain statement, dated October 30th, 1882. Is that the statement you have referred to (indicating paper)?

A. Yes, sir; this — the statement that Mr. Barber sent me.
76 Q. By mail?

A. By mail.

Counsel for plaintiff offers in evidence said statement, dated Chicago, October 30th, 1882.

The WITNESS: I would state there was a conversation, which I forgot, between April and July. I was up in May.

Mr. DENT: We have a question whether this statement is the same that was delivered. We supposed there was an addition to it in prices, appended to it below, torn off.

Mr. STILES: How is that, Mr. White?

A. Nothing; just as it came to me.

Q. This is as it came to you?

A. Just as I received it from Mr. Barber.

The COURT: What statement is that—of what date?

Mr. STILES: October 30, 1882, a statement which we claim reserves these deals in controversy, the particular one upon which this money was put up.

The COURT: You offer that now?

Mr. STILES: We offer that in connection with the written demand (reading): "Chicago, October 30, 1882. A. S. Maltman (J. B. W.) in account with G. M. Barber." J. B. W. is who?

The WITNESS: Is me.

Q. J. B. White. "1882, July 1, balance, $12,000.00." Had he that balance?

A. Yes, sir.

Q. Money that you had furnished?

A. Yes, sir.

Q. Cash money?

77 A. Yes, sir.

Q. "July 3rd, draft, $3,000." Do you recollect sending him a draft?

A. Yes, sir.

Q. "September 11, profit, as per statement rendered, $931.25," etc. (Counsel reads remainder of statement.) What were his commissions?

A. A quarter of a cent on wheat—that is, a quarter of a cent a bushel.

Q. What were they on corn?

A. One-eighth at one time, and I think a quarter towards the last; made a rule it had to be a quarter on co-n, too.

Q. On pork, how much a barrel?

A. Pork, ten cents a barrel, I think. I am not positive; either five or ten.

Q. You started to speak about a conversation in May, 1882.

A. Yes, sir. I had one in May which I forgot; about the 22nd or 23rd; somewhere along there in May. I could not be positive to the day, or two or three or four days.

Q. What was it?

A. I had sold some wheat before I came here, probably 40 or 50 thousand bushels, and I came up with the intention of selling *me* more, believing it to be a good sale from the opinion I could form as to the general outlook of the country crop. I believed it was going to be a good crop of wheat, and I was satisfied that

78 July wheat, in consequence, if it was a good crop, would be much lower than @ $1.24, and I went up to the board of trade and I saw Mr. Barber and I asked him what he thought about selling some more July wheat. At this time the board of trade was voting on a rule to accept No. 2 red wheat tendered for July, spring, or July two.

Q. You mean No. 1 red wheat?

A. No. 1 or 2 red; but it was not determined that day I was there; a vote was about to be taken in a day or two afterwards, or probably on that very day; I am not sure; it was going on at the

time but not determined. Then I asked him what he thought about selling some more July wheat. Well, he said he thought the market looked like it was going to be cornered. "Well now," says I, "I think it is cornered now, if there is anything in it; July wheat is $1.24, and here is August down to 12. Now, they can't get any further apart, and don't you think July a better sale than August, in consequence of that?" Well, he said he did not know but it was. He said they could not get any farther apart than where they are now at the last of the month. They were about 12 cents apart then. "Well, then," I said, "If you think so, then I had rather sell July, because it will have to come down to the August or else August will go up to the July, *and* unless there is a cornering
79 influence. If there is any corner, they can't keep them any further apart than they are now, because it is farther than the rules will permit." And we talked the matter over and concluded to sell July and did sell it; sold enough that day to make it 100,000 bushels, with what I had already sold previous.

Q. That sale made up 100,000 bushels?

A. That sale made up 100,000 bushels.

The COURT: How much did you sell that day?

A. Oh, I sold them about 50,000 then, I guess, that day; I could not be positive, but there was 100,000 all together.

Mr. STILES: Do you recollect any conversation that you had with Mr. Barber about the close of July?

A. About the 1st of July?

Q. No; about the close of July, in regard to the tender.

A. Yes.

Q. What was it?

A. At the last of July I came up then to see about the deal—how it would be settled. The corner clique, as they termed it, continued to boost July wheat up and keep it up still, in the face of the fact that the other wheat was all down.

Q. What other wheat?

A. No. 2 red winter.

Q. What was that worth at that time?

A. Well, on the last of July it was worth 98 cents to a dollar in the market, cash—wheat.

Q. No. 2 spring?

80 A. No; spring was held up to a $1.35 by the clique—the corner, as they termed it.

Q. I interrupted you; you started to tell about a talk you had with Mr. Barber about the tender.

A. Yes, sir; when I came up that morning I went to Mr. Maltman's house, on South Water street, and was talking with him a little about the wickedness of the deal, as you might term it, and giving our opinions one way and another as to how it might terminate—the unfairness of it, and injustice, and so forth—and in the meantime, while we were talking, Mr. Barber came in. I was sitting in the back part of the office, inside the rail, and as he came in,

"Why," says he, "hello; good morning; you thought you would come up." "Why," says I, "Yes; I wanted to come up and see you about this thing—how it would terminate." Says I, "What do you think?" Well, he said he did not exactly know, but he says, "They will have — call a committee; of course they will fix the
81 price way down." He says, "They won't fix it, anyway, over ten or fifteen cents, and that will let you out on a good margin." Well, I said, "That is true, but we are entitled to more than that." Says I, "We ought to have a profit now." I said, "That July red is only 98 cents, and I believe that is a legal tender on the board." Well, he said he believed so too, and he was going to tender it. Says he, "We are going to do that; we are going to tender red wheat to-day."

Q. Did he say who we were?

A. No, sir; but evidently he meant the other members of the board.

Q. Did he, during the conversation, say who he meant by we—that is, how many we included?

A. Well, it was the members of the board; it was probably 30 of them; it — either "We are or they are going to tender red wheat." Well, says I, "Will you have to buy it?" I first said to him, "Suppose they don't take it?" "Well," says he, "I don't expect they will take it, but we want to keep up appearances anyhow—keep as near the rule as we can." Well, I said it was an outrageous piece of business, the way they had managed that deal, and surely the board would not sustain such a deal as that, and he says, "No;
82 there was no one of them thought such a violation of the rules would be sustained for a moment; none of them believed it. When the committee is called," he says, "of course they will settle it, and anyway they will settle it down to 10 or 15 cents, and then they will leave it at that, or the very worst," he says, "that they will do they will scratch the trade.

Q. What is scratch the trade?

—. Well, that is, call them all off. He says the very worst they will do they will scratch the trade, but he says they will settle it down to 10 or 15, and that will leave us a good margin to get out of it. Well, we talked the matter over in several views as to the enormity or wickedness of the deal from the fact that spring was selling in New York for $1.08 and they held it up here to $1.35, and especially as it was in violation of their rules—that was the point he made—it was so clearly against them. Finally he spoke up—it was about opening time and he had to go—and he said, "Come up to the board." Well, I said, "All right, I will go up by and by." After awhile I went up, probably about 10 or half pas- 10 o'clock, and in the meantime I told him I would like to see the rules on that — tender their rules. I had not seen the rules of the board of trade up to that time; merely had heard them talked of.
83 I asked him if they had printed rules, and he said they had, and when I got up there I got a printed rule or the printed book published, from Mr. Wright at the board of trade, and looked up that rule which was cited.

Q. Does that look like the book (showing book to witness)?

A. Well, I got a book and I guess this is the one, because I gave it to Mr. Barber and he kept it. I don't know whether this is the one or not. I wanted to look up on the book the rule where they said red wheat was a good tender. Well, then I left Mr. Maltman after awhile and went upon the board of trade and I met Mr. Barber. Says I, "What did you do?" Says he, "I made a tender." Says I, "Did you have to buy the wheat?" He said, "No." Says I, "How did you do"? Well, says he, "I went to old Hutch.; I bought 10,000 bushels of him; I do my banking there."

Q. Who is old Hutch.?

A. "Old Hutch," they call him a packer here.

Q. Who is he?

A. Hutchinson; he is a member of the board of trade. They talked about him quite familiarly there; — is Mr. Baker's lan-
84 guage. He said, "I got it from old Hutch." I do my banking a good deal there and he accommodates me." He says, "I just got 10,000 bushels, and I tendered it to all of them." Says I, "Did they take it? "No," he says, "I wanted to keep up appearances. I went around with 10,000 bushels and nobody received it." Then we talked about the termination; that it was unfair to keep money tied up this way—my margins were tied up—we had no use of it. Well, he says, a few days would settle it; they would call the committee together and they would settle it, and on those grounds I did the squealing; had to patiently wait their action; did some other dealing in the meantime in something else.

Q. Do you remember any talk with Barber between the 24th of May—the talk of about the 24th day of May—and this talk that you have just testified about?

A. No, these are the only two personal interviews that I had with him. *If* I have related the gist of the conversations; of course, I cannot relate them word for word.

Q. If I understand you rightly, he said that he borrowed the wheat from old Hutch.?

A. He borrowed the receipt; yes, sir.

Q. A warehouse receipt?

A. Warehouse receipts, 10,000 bushels.

Q. Hutchinson is a banker, isn't he?

A. Yes, sir, and a provision man too.

Q. Do you recollect what bank?

A. It is called, I think, Exchange Bank?

85 The COURT:

Q. Corn exchange?

A. Corn exchange; that is it.

Mr. STILES. Where was Barber's office at this time?

A. It was in the Exchange Place; there near the board of trade, in Gregg & Son's office. He had desk room there.

Q. He had desk room in Gregg & Son's office?

A. Yes, sir; at this time, in July, I had sold 10,000 bushels of July oats, which we took in at a loss of $2,000, and that was cornered also.

Q. Were you informed by Barber to whom these sales were made—that is, at the time they were made?

A. Of this July wheat?

Q. Yes, sir.

A. No, sir.

Q. Had he been in the habit of notifying you to whom he had made sales?

A. No, sir; never.

Q. Or of whom he had made purchases, as the case might be?

A. No, sir; never did.

Mr. STILES: I will formally offer these various statements and the letters?

The COURT: Yes, sir.

Mr. DENT: Where are the telegrams you received, Mr. White?

A. They are here.

Mr. DENT: You have not produced those, have you?

86 Mr. STILES: We have a lot of telegrams, and so on, Mr. Dent, which we will turn over to you for examination. The letters which I offer are dated, respectively, May 29th, 1882, June 7, 1882, June 8, 1882, June 10, 1882, June 28, 1882, and April 20, 1883, which are as follows:

EXHIBIT No. 2.

CHICAGO, *June* 7, '82.

J. B. White, Esq.

DEAR SIR: Your favor of yesterday, with draft for $1,000.00, at hand. You stated you would remit again to-day if markets were up, and Mr. M. has just shown me a despatch he has just rec'd from you stating, "To- late to-night; remit to-morrow." I thought then I would get another draft from you in the morning; have figured your trades and find they are against you as follows:

100 M July —, to $1.33	9,162	50
750 bbls. pork, to $20.00	750	
10 M July oats, to 42¾	156	25
20 M Sep. corn, to 70⅜	31	25
Total against you	$10,100	00
Margins in my hands	7,000	
Bal.	$3,100	

Wh't this p. m. is 1.33, bid, and no sellers at any price. They are running around to the officers to try and buy at $1.33. You should send me at least $5,000, which will not take the wh't up quite 2c. more, to say nothing about the rest of the deal. Please wire

87 me in the morning that you will send that am't to-morrow.

Yours very truly, G. M. BARBER.

EXHIBIT No. 3.

CHICAGO, *June* 8, '82.

J. B. White, Esq., Fort Wayne, Ind.

DEAR SIR: Your favor of yesterday at hand. I wrote you last night that your trades were $3,100 against you, besides the money I had to-night. The trades are $6,762.50 against you, besides the margins in my hands. I wired you at 1 p. m. to-day to send 7 or 8 M dollars to-day. Mr. Maltman has just shown me a despatch from you saying exchange had gone forward, but not saying how much. In your letter *when* you say you will send $3,000 or $5,000.00. Now, $5,000 does not make your trades good to the market, and I wrote you before bank closed that it wanted much more than this am't to keep your trades good, and I shall be disappointed if I do not get at least $7,000 from you in the morning. On a deal of the magnitude of yours I ought to have a margin of $3,000 to $5,000 in my hands all the time, and I don't believe there is another member of the board that would let a deal run as I have this, and I can't let it run
88 longer this way. I must have the margins to keep your trades certainly good to the market or I must close them out. You have an entirely wrong idea of the effect of the board fixing a price for calling margins. Under the present rule each party can make the other put up 10 per cent. on the contract price, and either party must keep their trades good to the market in addition. For instance, if I have wheat sold at 1.24 I can now make the buyer put up $600 on each 5 M—

And he can make me put up	$600
& to market 1.24 to 1.36	600
Total	$1,200

It is enough for me to keep your trades margined to the market, as long as I have to furnish half the money myself, without putting up an additional $12,000 just for the pleasure of calling them $12,000. Now, how would it be with a margin rule? If the wh-t was sold at 1.24 (about the price of yours) and the marginal price was 1.24 it would not help the seller any, as both buyer & seller would have to put up the 10 per cent. or 600, and the seller the dif. between 1.24 & 1.36, or $600, in addition, just the same as at present. If the wh-t was sold at 1.36 and the marginal price was fixed at 1.24 the
89 seller could be made to put 10 per cent. and the buyer 10 per cent. & down to 1.24 or $600 on each 5 M additional. Now, Mr. White, you went into this deal with your eyes open, and there is but two ways to do—give me a plenty of money to carry the deal (and I will carry it as long as you want to) or bring in your shorts. [I hope you will do the former. *]

Very truly, G. M. BARBER.

P. S.—I erased that line, as I don't want to advise at all, as I know nothing about it.

B.

* Words in brackets are erased in copy.

Q. Have you any recollection about receiving a letter from Mr. Barber of the 25th of April, 1883?

A. I cannot remember. I looked up, when I found we were going to have a racket about this thing—I looked up everything that I could find.

Q. Did you bring up everything you had?

A. All the letters I could find. I never received many letters from Barber.

Q. That is, you mean you never received any in April, 1882?

A. Oh, it is possible I did.

Q. You do not mean you never received any from Barber?

A. Oh, no; I did not say so. I say I did not receive many from him. I received more from Maltman. It is possible I re-
90 ceived more letters than I produced, but I produced everything I could find.

Cross-examination by Mr. DENT:

Q. You commenced doing your business through Mr. Maltman, I understood?

A. Yes, sir.

Q. Did you continue to do your business through him to a considerable extent with Mr. Barber?

A. Through Mr. Maltman with Mr. Barber?

Q. Yes.

A. Yes.

Q. During the whole transaction, the whole time that you have covered in your testimony?

A. Yes; I had been doing business with Mr. Maltman two or three years previous to this.

Q. And you continued to transact business through Mr. Maltman with Barber, did you not?

A. My business previous to that was not on the board of trade, but Mr. Maltman was buying on the market here and shipping stuff down there. I deal in a great many things, produce of all kinds, and dry goods even, and groceries and hats and caps. He has bought those things in this market for me. Mr. Maltman has, perhaps, a thousand or fifteen hundred dollars' worth a month, different kinds, and shipped them to me and I have used them.

Q. And he remained your agent with reference to the business you had with Mr. Barber, did he?

91 A. When I wanted to trade on the board I asked Mr. Maltman to deal for me on the board. Well, he wrote to me he was not a member of the board and could not do it, but he would find a good party; and the first deal or two he made, he made through a man by the name of Prentice, and he did not care about continuing with him, and I didn't know Prentice. He lost some eight hundred dollars there—let it go; then he referred me to Mr. Barber. He said he was a neighbor of his up in that neighborhood, and he knew him very well, and he was a good, reliable man, and there was no danger of losing anything if he made it. He said Prentice was unreliable. He was not a very reliable man. He broke up once or

twice; consequently in dealing on the board it was best to have a safe party, and referred me to Mr. Barber. I suppose he done trading with him. I did not see Mr. Barber for two or three months afterwards.

Q. After that time Mr. Maltman always continued from time to time to give orders for you to Mr. Barber?

A. Well, in the first place, I ordered direct from Mr. Maltman, because I did not know Mr. Barber would execute my orders. In the first place, Mr. Maltman took my orders from his office to Mr. Barber, in the first two or three months, until I came up and saw Mr. Barber; then I did business with him directly on the
92 board myself. Afterwards I would sometimes telegraph to Maltman and sometimes direct to Barber.

Q. Just as it happened?

A. Yes, sir.

Q. Mr. Maltman might take your order directly and deliver it to Mr. Barber?

A. Yes, sir.

Q. Or communicate verbally to Mr. Barber?

A. Either way; yes.

Q. And that continued to be the course of business, did it, as long as you had associations with Mr. Barber in any way?

A. No, sir; it did not continue.

Q. Up to what time did it continue?

A. There was no breaking off and there was no continuation either. Mr. Maltman told me this.

Q. I am not asking you what Mr. Maltman told you, but did Mr. Maltman continue to be your agent to give your orders to Mr. Barber?

A. Not necessarily—not what you might say indispensably so, because I give my orders directly to Mr. Barber.

Q. But Mr. Maltman did to some extent?

A. Certainly he did.

Q. And, until you closed your business with Mr. Barber, continued giving your orders to Mr. Barber?

A. Not much lately; no; not in the last two years; very little.
93 Most of the business I done directly with the board of trade, because I found the messages would reach there quicker than they would go through the hands of Maltman; consequently I adopted the plan of going right straight to Mr. Barber and referring my telegrams directly to him in the latter part of my business.

Q. And you thought, in inquiry of Mr. Maltman as to the responsibility of the person who would execute your orders, to find some person who would be responsible, I understood you?

A. Yes, sir.

Q. And Mr. Maltman recommended Mr. Barber as being responsible?

A. Yes, sir; he said he was.

Q. Was there anything said about Mr. Barber guaranteeing the trades or standing in the position of guarantor of the trades that were made?

A. Well, he said this: That Barber was pretty well posted; knew the fellows on the board, and knew the trading men; and he said, "We divide the commissions—Barber and I—on the deals." He said he got one-eight- and Barber got one-eight- on wheat, and it was sometimes one-eight- apiece and a quarter; sometimes it was only one-eight- on corn, and they divided that, but if I was here myself then they only took one-eight- on the wheat; consequently they made a difference there when I closed the trade myself on the board.

Q. Mr. Maltman was accustomed to charge you commissions
94 for all business done by him for you, wasn't he?

A. Yes, sir; on my provision and produce trade he charged me 2½ per cent.; anything I wanted—clothing; five per cent. on dry goods and notions; 2½ per cent. on meats and such things.

Q. And in respect to this business on the board of trade you understood that he was going to divide commissions with Mr. Barber, did you?

A. Yes, sir; he told me so.

Q. He was to receive half, and that was all he was to charge you?

A. He did not charge me that; Maltman did not do it.

Q. But he collected it?

A. They settled that among themselves. I don't know how they done it.

Q. He collected that from Mr. Barber.

A. Yes, sir; he did not figure. Mr. Maltman did not — in the trade any further than sometimes he casually talked with me.

Q. Now, I ask you, before I go on, to see whether you understood my question what was said as to Mr. Barber guaranteeing the trades that were made so you would not lose anything on account of the insolvency of customers with whom Barber dealt?

A. He said distinctly that he would make his trade with
95 responsible parties; that he knew them; that he was not going to trade with those chaps that were irresponsible, and there — lots of them. He would not trust them an hour, he said.

Q. You understood him to assure you that then the dealings could be with responsible parties?

A. Yes, sir.

Q. That he knew to be responsible?

A. That is what he said. He said if I made anything I would be sure to get it.

Q. Well, you did make a good deal, didn't you, and get it from time to time?

A. Yes, sir.

Q. Continued to make something, didn't you?

A. Well, in the end I did not.

Q. As long as Mr. Barber dealt for you?

A. Well, I made a good deal and I lost a good deal more; that is about how it terminated.

Q. You made a good deal in May and June and July, 1882, didn't you, in some of the dealings that you had?

A. Yes, sir; I made 4 or 5 thousand dollars, I think.

Q. Have you gone over the matter, Mr. White, so as to see whether you have not received more than 4 or 5 thousand dollars in profits during that period?

A. That statement will show it pretty near.

96 Q. Here is the statement that I was looking for (handing a paper to witness); perhaps by looking over that you will recognize it is correct. I refer to my paper because I am a little more familiar with it than yours; they are the same substantially. Didn't you receive a profit May 6th on or about that date, on account of July wheat, of $1,312.50?

A. Yes, sir.

—. That was on 70,000 bushels of wheat, wasn't it?

A. I suppose so. It don't show so here (referring to statement), but I guess that must be it.

Q. And again, May 8th, a profit of $550?

A. Yes, sir.

Q. That was on account of 20,000 bushels of July corn and 65,000 of July wheat, wasn't it?

A. I guess so. The items are not here, but the dollars and cents are here—the profit is here.

Q. Again, on May 23rd, $156.25?

A. Profit?

Q. Yes, sir.

A. That is not here.

Mr. LEWIS: If you will read the next one—he has got the two together there.

Mr. DENT: Add to that $56.25 the next day, May 24th, making $212.50?

A. There is $212.50 here; that is right.

Q. That included profits on 10,000 July wheat and 10,000

97 more, 20,000 all together, didn't it?

A. Yes, sir; very likely.

Q. And on the 25th of the same month did you not receive $431.25 profits?

A. Yes; there is a profit here on oats and corn.

Q. 30,000 of July corn?

A. Yes, sir.

Q. And May 26, $900 on 50,000 of wheat; is that so?

A. $900? It don't say what it is. I presume that is it.

Q. Profit on 90,000 July wheat, May 27, $181.25. That was on August wheat, wasn't it?

A. I expect so; it don't show here; there is a profit here; the amount is right.

Q. And September 11, $931.25 of profit. What was that on, do you know?

A. September corn, here it says; it don't say how much.

Q. And September 12th, a profit of $2,018.75?

A. Yes, sir.

Q. What was that on, do you remember?

A. It says here pork and oats.

Q. October oats?

A. I guess so—yes.
Q. September 27, $318.75?
A. Yes.
Q. That was on oats, wasn't it, and corn together?
A. Yes, sir.
Q. Or was it on corn altogether—October corn?
98 A. Yes, sir; I guess it was October corn, $318.75.
Q. October 26, profit of $300?
A. On year corn—yes.
Q. Now, as to this wheat that is included in this statement on which you made a profit of 70,000 bushels in one instance, 65,000 in another, 10,000 in another, 10,000 in another, and 90,000 in another, how did you give the orders in reference to that wheat? Did you give them verbally, or how did you communicate them to Mr. Barber?
A. I think they are mostly by telegram. They are mostly telegraph orders then.
Q. The telegrams here don't cover all the orders, apparently?
A. No; I was up here myself once in a while and done a good deal of trading.
Q. You did sometimes give a verbal order?
A. When I was here—yes; but I think these are mostly telegrams.
Q. Did your verbal orders vary from your orders by telegram or were they substantially the same as those you put in writing in telegrams—your verbal orders?
A. Why, yes; either to buy or sell.
Q. That was the form you adopted. You did not vary from it in any instances, as far as you know?
A. Oh, yes. It is understood I was buying and selling, and I would usually use the form "cover"—that is, simply to square the deal up.
99 Q. Sometimes you would use the form "cover" when you wished the matter to be closed up by a counter trade?
A. Yes, sir; either way to cover up profit or loss amounts to buying or selling it.
Q. You were buying during that time, were you not, just giving orders to buy as well as to sell?
A. Especially if it was closing a short deal, it would be to buy. If it was buying wheat we would close that by a short sale again to close the deal.
Q. You gave a good many verbal orders to buy as well as to sell, did you?
A. Yes; if I wanted to go long in the market I would give orders to buy.
Q. What phraseology did you use in giving orders to buy?
A. I would say buy—that is, if it was a new deal. If it was to close an old deal I would say cover, and that was buy, too. It is one and the same thing and used for different purposes.
Q. You left it for Mr. Barber to put the contract in form when you asked him to buy or sell?
A. Oh, yes.

Q. You understood that he would go in the board of trade and either buy or sell?

A. Certainly.

Q. And you understood that he did go on the board of trade and buy and sell according to your orders, didn't you?

100 A. Yes, sir.

Q. Was there any disobedience of your orders, so far as you know?

A. No, sir; not that I know.

Q. He observed your orders, so far as you know?

A. Yes, sir; so far as I know.

Q. You have no complaint to make on the score of non-observance of your orders?

A. No, sir.

Q. Now, you spoke in your testimony about what you called the Keen corner.

A. The Keen corner; yes.

Q. Were you considering at any time while you thought that corner was about to culminate as to buying wheat to fill the orders that you had given—buying wheat at Milwaukee or elsewhere? Did you suggest that you would do that?

A. No, sir; I did not.

Q. Do you remember of speaking to Mr. Maltman about that?

A. I know it was talked about; a great many talked of it, but they said parties that attempted that got beat, because they simply dropped the grade on them.

Q. Now, you are speaking about a matter that occurred after your conversation. I am asking you about your conversation. Do you remember of having such a conversation as that you would send to Milwaukee and get the wheat and make a delivery?

A. That I had sent?

101 Q. That you would send?

A. No, sir; I never said I would send.

Q. Didn't you talk with Mr. Maltman as to your sending, and the possibility of your buying wheat there to fill your orders?

A. It is possible enough, but I never dreamed it.

Q. Didn't you talk with him about doing it?

A. No, sir, not personally; I said some were doing it, some had done it, but they made nothing by it, because they dropped the grade on them—the inspectors—and they might just as well pay the corner price.

Q. You are stating now what you supposed occurred with those who did as I suggest, but I want to know what your conversation on the subject was while the matter was running—what you said about it.

A. Well, I never thought of doing it myself.

Q. Not what you thought.

A. Well, I never said I would.

Q. You admit having said something about doing it. Now, what did you say?

A. It was general talk; some people had it done that was in the

corner, and they talked about the propriety of doing it; it was only three cents, I think, to bring it from there here, and 12 cents, and it was 15 or 10 cents, something along there, lower a bushel, and they could fill their contracts here with it and not have so much
102 as they would in extortion of the corner.

Q. With whom was that general talk?

A. That was all over amongst the gamblers or brokers, as you may term them.

Q. Now, I am asking you about your own talk.

A. I talked with a good many of them about it.

Q. You talked with a good many?

A. About it being done; yes; it was *it was* done in two instances, I believe; yes.

Q. As to your talk with Mr. Maltman, what was it.

A. About my personal action in this matter?

Q. Yes, sir.

A. Nothing at all — the propriety of doing it.

Q. You did talk with him as to the propriety of doing it?

A. Well, not personally. Yes, sir; I might have said, "Well, it could be done," or "I wished I could do it," or something of that kind, but I could not do it if I had wanted to.

Q. I am just asking what you said, nothing more than that.

A. Well, there was nothing said as to any earnestness or intention on my part. We certainly talked about others doing it, and there were lots of able men who could do those things, and some did do it who had the money.

Q. When did you have the conversation with Mr. Maltman?

A. About this Milwaukee business?

Q. Yes, sir.

103 A. Oh, it must have been about the time the corner culminated. I presume about—it was a May corner—it was about the 25th of May, maybe along into the 26th, because it had to be done; it was done a few days previous; it takes four or five days to bring it from Milwaukee here, one thing and another—handle it—consequently any talk must have been with a view of doing it previous to that.

Q. When you said that Mr. Barber told you how he managed his own business were there any direction from you to him that he should man-ge your business in the same way?

A. No, sir.

Q. You controlled your own trades, didn't you?

A. Oh, certainly.

Q. He was not to close out your trades until you directed him to do it, was he?

A. Not unless the margin was exhausted.

Q. He was to observe the rules of the board of trade, I suppose?

A. Yes, sir.

Q. That you understood?

A. That was understood.

Q. You understood that these contracts were made subject to the rules of the board of trade?

A. Well, the rules of the board of trade, so far as the rules
104 were concerned. All I got that from was his talk — understand until after this actual culmination of this July corner; I then got a printed copy of them and looked into it. Previous to that I understood the rule was that a fellow had to keep his margin good; that was about all the rule I knew of.

Q. You knew there were some rules there?

A. Yes, sir; and yet I never knew they were printed; I supposed it was simply an organization, like some other matters, where they had an understanding among themselves.

Q. You also knew that Mr. Barber, being a member of the board of trade and making contracts on the board for you, would be obliged to observe those rules, did you not?

A. Well, I think so.

Q. Now, if he was accustomed and suppose you understood his conversation to be that it was his custom to close the trades every day or to make one trade that might offset another, you did not ask him to do that way for you, did you?

A. No, sir; I did not.

Q. But you told him to buy?

A. Yes, sir.

Q. And you told him to sell?

A. Yes, sir.

Q. And you told him when to sell out?

A. Yes, sir.

Q. When to cover or when to close trades?

A. Yes, sir.

Q. And he observed your orders?

105 A. Yes, sir; I think so.

Q. You have related about all that you said to Mr. Barber or all that he said as to the form of the transactions, have you?

A. Oh, I suppose I have; I may have omitted something; it is about as near as I could think of; it run along a good many years, you know.

Q. Coming down to April 19, 1882, you said that you talked with Mr. Barber as to whether there would be a corner?

A. No, sir; not then; no, it was in February; it was in February, 1882, I talked with him about there being a corner; then I was selling April wheat, you understand.

Q. Oh, I understood you to say that about the 19th of April, 1882, you had a settlement with Mr. Barber.

A. Well, yes, I did; but I wasn't here then; I had left home, going to Washington at that time, and I wrote to Mr. Maltman to close it up or telegraphed Barber to close it up and I would pay the difference, and I did.

Q. I understood you to say that you also had talked with him as to whether there would be a corner.

A. That was in February, 1882.

Q. Was that the last conversation you had with him?

A. Yes, sir.

Q. Before the July wheat deal came up?

106 A. Yes, sir; the July wheat deal was not—was cornered then.

Q. You had no transactions in July wheat as early as that, had you?

A. No, sir; the first deal I had in July wheat was when I was in Washington.

Q. You talked with him about whether there would be a corner or not, or didn't it pertain to July wheat at all?

A. No, sir; that was about April wheat, and in February I was up here.

Q. Did you have any talk with him prior to what you supposed was the July wheat corner, in July, 1882—about the corner if there was any?

A. Yes, sir; I told you in May I did—in May when I was up here.

Q. What time in May was that?

A. It must have been about from the 20th to the 26th—along there; I could not locate it exactly, but I was dealing then. I was up here and I had made the last of the trade, so far as it was running along that time, a few days in May.

Q. Up to that time you had freely purchased and freely sold July wheat?

A. Yes, sir; I sold a good bit and bought it from the time I had been in Washington to this time in May, and I was in Washington in April, about a month, trading—sold a good deal of it.

107 Q. Can you fix the day in May at which you suppose you had this conversation?

A. I could not fix the day; I know it was between the 20th and 30th.

Q. 20th and 30th of May?

A. Yes, sir; I think it was about the 23rd or 24th. There had been a fast day a day or two previous—I forget what fast day—some kind of a shut down day—and I came up the following day. Some day of observance was going on and the board of trade was closed for it, May 22d if I remember right, and I came up the day succeeding that.

Q. What was said in that conversation?

A. Well, then, I was short in the market and I talked with Mr. Barber about the propriety of going short more.

Q. What conclusion did you come to?

A. I came to the conclusion that it was the best sale—July better sale than August; well, there was a corner now, so far as the difference in price was concerned, and could not get any worse.

Q. And you acted on your judgment after that, did you not?

A. Yes, I did.

Q. You had made inquiry not only of Mr. Barber but of others, hadn't you?

A. Oh, I may have talked with others and talked a good
108 deal around about the situation as to our views of things, and talked to Mr. Barber and he gave me his views.

Q. Talked with Mr. Maltman too, did you?

A. Possibly I did; very frequently would talk on the subject in the deal. There was no particular secret about it. Each one wants to try to strike the right side.

Q. Mr. Barber did not attempt to influence you in any way, did he?

A. No, sir; not at all.

Q. Didn't he rather discourage you going on making other transactions in that condition of the market?

A. Well, he had apprehended there might be a deal in July. He said he was apprehensive there might be a deal in July—there might be a corner, because they were keeping it pretty stiff. Well, I says "suppose they expect a corner, or have cornered it, can it be any worse corner than it is? Here is July 24 and August 12. That is as wide as it possibly can get to be in the event of its being cornered at the end of the month; consequently it is possible that there will be a break, and if it is broke it is best to sell July, because it would have to fall down to August then, or August would approach July; that they could not keep it more than 12 cents apart at the end of the month." He and I talked about that, and he concluded
that that was so, as well as I did; that the corner rule which
109 they had against a corner would not permit any more separation from the succeeding month than that at the most, and probably not that much; 6 or 7 cents is about the extent of the corner which they generally make, because the rules are against making a corner; but I have been in three corners already. I was in the Keen corner, in the April corner, and with it all. Well, the Keen corner was about 7 or 8 cents apart at the close of the trade, and the April corner was about 8 cents at the close of the trade apart from the succeeding month. His reason was that in cornering they are under the rules, and that they could not possibly attempt to keep it further apart than that if there was a corner; consequently I took and sold July, believing that if the break did come it would — heaviest in July, and it would be in my favor.

—. But, in addition, did not Mr. Barber suggest to you that it was hardly safe to deal in July wheat?

A. That is all. He was earnest enough in his opinion, just as I would be, and certainly if he knew it was cornered positively — but he did not see it; nobody can see that very well. They have different views.

Q. By your saying that you were in this corner your meaning is, is it not, that your trades were some affected by what you supposed were corners in the market?

A. No, sir; right in the corners; that Keen corner that
110 had some 12 or 13 cents apart at one time.

Q. You do not mean that you had any participation in the making of the corner in the market—that you knowingly participated in making a corner in the market in any way?

A. The seller could not make any corner. I was selling at that time. A seller don't make a corner; sellers get caught in a corner.

Q. Or is it your meaning that Mr. Barber had anything to do with making the corner?

A. No, sir; I don't think he did.

Q. You have not intended to convey that idea?

A. Not the slightest.

Q. If there was any corner it was not from your fault and it was not from Mr. Barber's fault, so far as you know?

A. No, sir; I think not.

Q. After Mr. Barber had made the tender, as you understood, of red winter wheat on the 31st of July, 1882, you approved of what he did, did you?

A. Yes, sir.

Q. Did you take any steps with reference to having a committee convened or appointed by the board of trade to fix the settling time or determine the price of wheat on the 31st of July, 1882?

A. Not the slightest, sir. I could not have any influence or weight or control with anything of that kind.

Q. You took notice of what was being done?

A. Certainly I did.

111 Q. Did you confer with those who were acting in that matter?

A. I conferred with Mr. Wright; yes, sir.

Q. Mr. A. M. Wright?

A. Mr. A. M. Wright, and I talked, I suppose, with a dozen parties, but I conferred with him for the very reason that he was a prominent operator and — that deal himself?

Q. Why did you go to Mr. Wright about that matter?

A. The reason of that was I saw he published a communication in the paper one or two times in regard to this corner; at least if he did not publish it he was interviewed by a reporter, and his name was given out showing the heinousness and wickedness and injustice of this thing as against the rules of the board of trade and contrary to the laws of the State, and such language; consequently I went to see him about it. I was in consultation with him.

Q. The complaint was that the price was put up too high on the 31st of July, 1882?

A. Yes, sir.

Q. And you sought to have it fixed at what you thought was a better figure or more equitable price?

A. Well, I say I could not seek anything of the kind or have anything to do with it. I was an outsider, and my voice was not heard the slightest. My broker was the man to do that.

Q. Didn't you take that matter in your hands of going to Mr. Wright?

112 A. Not a bit—any more than I would talk with you about it.

Q. When did you go to Mr. Wright?

A. That very morning I was up here—the 31st of July; that is where I got one of those books the very first time I ever saw them.

Q. And you got a copy of the rules of the board of trade?

A. Yes, sir; I asked him if there was printed rules, and he said yes; and I ask- him only to see the rule which speaks about the tender of wheat, to see if it applied to *in* our case, and he showed it to me, and he believed it did.

Q. Do you remember which of the rules it was?

A. I got a memorandum of the rule. I think it is on page 46, rules 1882, section 7, the rule I was interested in. He believed it was a legal tender; so did I. They change the rules, you understand, once in awhile, but this rule was the rule that was in existence at that time.

Q. Will you please to look and see if that is the rule you referred to (handing witness pamphlet)? That is the rule that has reference to the determining price, isn't it?

A. It is; page 51, yes; here it is, page 51, section 3, yes; that was fixing the value.

Q. Will you please read that rule?.

A. Yes, sir; I will. It is board of trade rule, rules 1882, section 3: "On contracts for grain for future delivery the tender of
113 the higher grade of the same kind of grain than the one contracted for shall be deemed sufficient, provided the higher grade of grain tendered shall not be of a color or quality that will depreciate the value of the other, if mixed." That is the rule we tendered that No. 2 red under, and I believe that red would make a good tender according to that; it would help the spring.

Q. Now, after that time, what steps did you take with reference to indemnifying or protecting Barber?

A. I took no steps whatever.

Q. In the way of employing counsel, for instance?

A. I employed no counsel any further than I went to see counsel.

Q. Who was that?

A. For Mr. Barber—Mr. Burke. He was a lawyer that had charge of what he called contested cases. There were some 32 members of the board in contested cases, and Mr. Barber joined in with them. I footed the lawyer's bill; that is all I did.

Q. That is Mr. John E. Burke?

A. John E. Burke, yes.

Q. Did you understand he drew a bill for Mr. Barber to sign in that matter?

A. I don't know anything about that; I was not here at the time Mr. Barber signed it.

Q. What instructions did you give Mr. Burke in that matter? What did you say to him?

114 A. I just said I was one of the fellows that got bled in this affair, and I didn't want to stand it if I could help it. He was seemingly as much out of humor about it as I was, as far as the situation was concerned—the unfairness of it.

Q. Did you make any agreement to pool with the other 31 who were concerned in the matter?

A. No, sir; they wouldn't recognize me whatever; I was not a party that had any voice in this matter; I was outside.

Q. Yes, but so far as expenses were concerned did you make an agreement for pooling with the others?

A. No, sir.

Q. Using Mr. Barber's name?

A. No, sir; I did not, but I paid the expenses all the same, and I did not make no arrangement.

Mr. STILES: You were a paying party?

A. Yes, sir; I paid certainly, but there was no arrangement about it; I didn't know anything about the expense.

Mr. DENT: You understood that you were to pay, didn't you?

A. No, sir; I didn't understand anything about it, but I supposed I would have to pay.

Q. You supposed you would have to pay?

A. Yes, sir; but there was no understanding.

Q. By that you mean that you did not know what the cost would be particularly?

115 A. No, sir; I did not know as there would be any cost. There was a big crowd of the members of the board of trade in it and I did not know how they would arrange it; but when it came to pay, why, I paid; the bills were presented to Mr. Barber and Mr. Maltman, and I told them to pay them and I would pay them back, and I did.

Q. Was Mr. Barber at home, do you understand, when you went to Mr. Burke?

A. No, sir; he was not.

Q. He was away?

A. Yes, sir; I went up with Mr. Wright to Mr. Burke. He said there was a lot of them going up that morning to get out the papers, and he done so, and I told Mr. Burke the situation I was in, and he says, "Well, when your broker comes here have him come up and see me."

Q. It was understood that Mr. Barber was your broker or your commission merchant?

A. Yes, sir.

Q. And that when he came home he would go to Mr. Burke, as you had already arranged with Mr. Burke he should do—that was your understanding?

A. There was no arrangement; I could not arrange that matter, but I was very glad to have it done, and I told Mr. Maltman about it, and I was sorry Mr. Barber was not at home, and when he did return he went and joined in with the others to contest this thing.

116 Q. And you knew how the matter progressed after that, did you?

A. Yes, sir.

Q. You knew a bill was filed?

A. Yes, sir. Well, I don't know what form it was, you understand. I knew they were contesting this matter; that they would not submit to it—the members of the board.

Q. It was contested in the courts?

A. It was contested in the courts in some formal way to get to the supreme court. There was no fight made about it down here. As I understand, they simply went in here and admitted that it was wrong or right, one way or the other, to let the supreme court pass on it.

Q. There was a *pro forma* decision, as you understood, made in the court here?

A. Yes, sir; something like that.

Q. And the case was taken to the supreme court and there it was considered?

A. And there determined.

Q. And with what result, do you know?

A. Yes, sir.

Q. Do you know?

A. It was determined in favor of the cornerers.

Q. Now, that was after a committee had been appointed and had fixed the price, wasn't it?

A. Yes, sir.

117 Q. After the committee of the board of trade appointed under these rules had been appointed and they fixed the price then you went to Mr. Burke, didn't you?

A. Well, I heard there was a committee appointed in direct opposition to those rules.

Q. You were maintaining that the rules were not observed in the appointment of the committee?

A. Well, I am satisfied that they were not observed in the conclusion and ruling they made.

Q. And you intended that Mr. Burke should present the question whether they were properly observed to the court, didn't you?

A. The members of the board were doing that; I was not.

Q. You, as one through your broker or commission merchant, intended to present the question whether the rules had been observed, did you not?

A. I was very glad to see it taken in hand, certainly, and that was as much as I could do.

Q. And up to the time you sent this notice of April, 1883, the matter went along, as you understood, according to your desire on that bill in chancery, didn't it?

A. Well, it went to the supreme court and there it hung. We simply had to have patience to wait until they determined it.

118 They determined it, let me see, last January a year ago; January a year ago it was determined.

Q. You do not know, Mr. White, do you, how much of the grain contracted for by Mr. Barber he received from time to time?

A. Received none that I know of.

Q. Do you know how much of the grain he contracted to sell he delivered from time to time?

A. None that I know of, except that 10,000 bushels he speaks of. That was done to conform or comply with the meaning or impression that existed that it was a legal tender. Although, he said, he knew they would not take it, yet he would make it.

Q. But, still, he may have received and he may have delivered grain without your knowing it?

A. He may have done lots of things that I would not know, but I know in his agreement or mine there was nothing of that kind to be done; on the contrary, that we simply wanted our profits or losses—one way or the other.

Q. If he was guarantor and had to protect trade, he may have done in the way of delivering or receiving what you might not know?

A. Certainly. There are a great many things that I would not be aware of, but it was decidedly understood otherwise with us.

Q. I will ask you to look at these letters, and see whether you recognize them as letters which you sent to Mr. Barber
119 (handing witness a bundle of papers). One is Mr. Banister's. He was Mr. Barber's clerk, wasn't he?

A. Yes, sir. Well, these are my letters.

Mr. DENT: I shall desire to read these after awhile. They commence with May 26th and end August 23rd, 1882.

Q. I will ask you to look at some other letters which we have here and telegrams, directed, some of them, to Mr. Maltman—all the letters directed to him, and telegrams also, with one exception. Here your name is put in (showing same to witness).

A. This is my telegram; these are my telegrams. Of course, I cannot read them all just now, but I suppose they are all right.

Mr. DENT: Perhaps I might as well give the reporter the dates of these letters. Letters of J. B. White to George M. Barber, dated May 26th of 1882, June 2nd, June 6th, June 30th, July 1st, July 18th, July 24th, July 26th, August 15th, and August 22nd, 1882. Telegrams to Mr. Maltman, dated June 1st, 1882, June 10th, June 12th, June 27th, June 29th. Two on the 29th of June, 1882. The first of these is directed to J. B. White, care of G. M. Barber—I have an idea that there is a mistake made—signed by Mr. White. It came through Mr. Maltman, apparently.

Q. Look at these letters (showing witness other letters).
120 A. Yes, sir; they are all my letters.

Mr. DENT: Letters of J. B. White to A. S. Maltman, May 19th, 1882; May 20th, 1882; two of June 7th, 1882; June 10th, 12th, 28th, 26th, 29th, and 30th; July 1st, July 6th, 17th, 21st, and 25th; August 2nd; September 5th, September 9th, and September 20th; October 2nd, October 5th, and another of October 2nd and one of October 4th.

Redirect examination by Mr. STILES:

Q. Mr. Dent has asked you in relation to a statement presented you by Mr. Barber, in which you admitted certain profits received in your dealings; will you read the other side of the deal and see what your losses were? Your attention was not called to that by Mr. Dent?

A. No, sir.

Q. How does the other side read?

Mr. DENT: The losses were gone over by the counsel on the other side in his direct examination.

The COURT: Won't the paper speak for itself anyhow?

Mr. STILES: It has not been offered in evidence.

The COURT: I supposed it would be offered in evidence, if it had not been.

Mr. DENT: Well, the statement can go in.

Mr. STILES: These profits what Mr. Dent has spoken to you about were profits entered by Mr. Barber to your credit?

121 A. Yes, sir; from that time on.

Q. How now, on the other side, May 31st, 1882, to draft $3,587.50; did you send that draft?

A. Yes, sir; that is loss.

Q. July 31st is 10,000 July oats and 750 barrels July pork?

A. 2,600 loss on that; 3,500 lost on the other.

Q. That is, these losses were offset to your gains along from time to time?

A. Yes, sir; there is two more losses there.

Q. These profits, to which Mr. Dent called your attention, were not necessarily received in money by you?

A. No, sir.

Q. But were offset by your losses so far as the losses went?

A. Yes, sir.

Q. At the time you went to see Barber in relation to that suit was anything said between you and Burke about your paying him for his services?

A. No, sir; he called on Mr. Barber for the money, and Mr. Barber got Maltman to pay it, and I paid it to Maltman; that is the way it was done.

GEORGE M. BARBER, the defendant, having been duly sworn as a witness on behalf of the plaintiff, was examined in chief by Mr. STILES and testified as follows:

122 Q. Mr. Barber, after that notice was served upon you state whether you settled with the parties with whom you dealt with reference to these wheat deals?

A. On the board of trade?

Q. Yes.

A. I did, sir.

Q. How much did you pay them?

A. I paid them $11,193.75.

Q. Cash money?

A. That amount was cash, yes; certified check, as near cash as can be.

Q. That was the difference between what White had sold the wheat for and $1.35 a bushel?

A. No, sir; that in addition.

The COURT: What was the total amount you paid?

A. $11,412.50; that was the difference in the price at which the wheat was sold and the price as fixed by the committee of the board.

Q. Did I understand you to say that you paid in settlement with these parties $11,190 and something?

A. $10,193.75.

Q. $10,193.75?

A. Shall I tell you where the difference comes in?

Q. Yes, sir.

A. My commission on that 100,000 wheat. In the first place I had transferred some of these trades as they were originally made there, buying and selling, and had transferred some, and
123 there came in a difference there of $968 of actual money that I had paid in previous to the maturing of the contract by having sold to parties that much higher up than I had sold it to Mr. White for originally.

Mr. STILES: That is the way that the $12,000 became reduced to $11,000?

A. That is the way in which $968.75 came. Then there was my commission, which was $225, I believe—$250.

The COURT: Money you had advanced—how much?

A. $968.75, and that, with the $10,193 and my commissions, made the $11.412.50, which is according to the statement made by me to Mr. White. My commissions were $250.

Cross-examination by Mr. DENT:

Q. Look at this statement and explain it (handing witness paper). I wish to ask you why you paid this money, Mr. Barber?

Q. The first $968 I paid because it was the custom of the board and really made no difference, as I supposed that I had, instead of having it, sold, for instance, at a $1.25; if I put a $100 in and have it sold at $1.27, which was the custom of the board, it simply made no difference with Mr. White. I was accountable to Mr. White at the price at which I had reported sales to him—the price at which they were originally made, that part of it. Then the $250
124 commission, of course, I did not pay that out; the $11,193.75 I paid because parties had preferred charges against me before the directors of the board of trade. I was summoned to appear before them. I did so and was on the point of being suspended, and to prevent them keeping them from suspending me I paid the money or certified checks.

Q. On what account were you cited before the board of trade?

A. Well, for non-fulfillment of my contract or for the penalty of not paying the difference between the price at which I had sold the wheat and the price as fixed by the committee of the board of trade.

Mr. STILES: Was not some sort of writing served on you?

A. Yes, sir.

Mr. STILES: That will be the better evidence.

Mr. DENT: The writings are here?

Q. Was it on account of these trades you had made for Mr. White which were pending that you were summoned before the board of trade?

A. It was, sir.

Q. You may look at these writings and see whether they were notices served upon you coming from the board of trade in regard to that matter (handing witness a paper).

Objected to as not cross-examination.

125 The COURT: No, it is not cross-examination, but still, as he is on the stand, they are examining him—I suppose in the light that they have stated in the opening.

Mr. DENT: As he was asked about the payment, I want to know why he made the payment?

The COURT: Yes.

The WITNESS: These papers were received by me.

Mr. DENT: They are notices from the secretary of the board of trade, are they?

A. To appear before the directors.

Q. And compies of complaints?

A. That were included with them, yes.

Q. On what day did you make the payments you have spoken of?

A. On the 24th.

Q. With reference to those complaints, on what day?

A. On the 24th day of April, 1883.

Q. Did you appear before the board of directors?

A. I did, sir.

Q. And attempt to set up your defense?

A. Yes, sir.

Q. And was it recoginzed as a defense?

A. It was not, they ruled; by vote they decided my defense was insufficient.

Q. And then you made the payments?

A. Then I paid.

Q. Have you the checks that were returned to you after they were paid?

A. They are here, I believe, all of them.

126 Q. I will ask you in reference to the money you had paid out previously, the difference between the $10,193.50, to explain that more particularly with reference to the form of the transaction, if you have the papers?

A. Well, Mr. White sold wheat and bought again, and sold and bought.

Mr. STILES: We did not ask him anything about that.

The COURT: I understand that; but this matter of the $900 may be explained.

Mr. STILES: But that is part of their defense.

The COURT: Yes, I understand that, but we will make so much headway towards the defense if, while he is here, he is examined. You are not in a position for calling it out, and therefore it is not part of your case.

The WITNESS: I know one was a transfer of a trade.

The COURT: Explain it by illustration how the business was done?

A. If I had wheat bought of A, for instance, at $1.23, perhaps bought for Mr. White or not, and sold to another party on the board of trade at a $1.26, to B—if the party that I had it sold to comes to me and says you have 5 wheat sold to me, and I have it sold to A, and A has it sold to you—well, in order to obviate the necessity

of that trade standing open—until July, for instance—we
127 agree to pay or collect the difference of that trade rather than let it wait, and then the wheat goes around to the t-ree parties; if I had it sold to a commission man I would deliver it to him and he to the one that I had bought of and he to me; simply take them off the books, and not have so many trades open for business; less trouble than it is to draw checks for 5,000 bushels of wheat, and take it to the commission man that I would have it sold to get his check; there have been instances where these checks proved to be worthless; the commission man is liable also to loose half a cent a bushel of storage where it is delivered. That I know myself, because I have lost it—delivered to me by the party I had it bought of just, perhaps, a minute before three, and I had to go a block or two with it to get it there before three; could not do it; the next morning there was a half cent storage to be deducted, which was $25. By making these settlements, which is an after consideration, after trades are made, the trades are straight trades in grain.

Mr. DENT: Will you please look at this rule of the board of trade and see whether that is the one in which the reference to usage you are guided by in making those transfers is made (handing witness a pamphlet)?

128 The COURT: What rule is that?

The WITNESS: That is section 6 of rule 26, the one I will read; yes; I think I have read far enough here to satisfy me that that is it.

Mr. DENT: I will presently read the rule, but I will ask the witness to take one of the transactions and just explain it to you- honor and the jury.

Q. If you will take one particular case where you made that transfer and explain what is done, giving the parties who —, have you the papers before you there to enable you to explain?

A. I have them in my mind—some of them—one case where I had wheat sold for Mr. White at $1.23, $1.23½, and he wanted I should put it down to Gregg & Son at $1.28½. The market was then up to 30 or over.

The COURT: You had wheat sold for plaintiff at $1.23½?

A. He asked me to put it down to Gregg & Son at $1.28½.

Q. The plaintiff did?

A. No, sir; this party that I had it sold to at $1.23½ on the board, or Gregg & Son came to me—I forget which; but, at any rate, I did it at the request of one or the other of the firm and paid the company $250—a check for $250, which they received the money for;

129 then, instead of having the wheat sold on the board at $1.23½, as I done, I had it sold at $1.27½—five cents a bushel or $250. I paid that amount of my money right in on one transaction. Another case where I transferred a trade was only $12.50. I had originally sold to Crea & Davis for account of Mr. White $1.25⅜ a bushel. Crea & Davis came to me and says the market was up over 30—over a $1.30; came to me and says, I have 5 wheat, bought of you at $1.25⅜, and I have sold to B. F. Hinckley at $1.25⅜. Now, he says, *I* there is only a ¼ of a cent. and I will stand in the gap, and

they want I should put up margins or I want you should, or something of that kind. I want you to put it down to Crea & Davis at $1.25⅞. I did so, and give them the difference of $12.50, and let them out. There was another one, and in settlement, as it has been proved here. Mr. White bought and sold a great deal. All those purchases were closed up; they were closed up against sales, but not always in the order in which they were made. If I sold for Mr. White at a $1.28 and bought it at a $1.26, so far as he and I was concerned, I gave him credit the same day for that difference. I had the trade still open on the board, liable to let the trade stand
130 to July, and receive the wheat at a $1.26 and delivered at $1.28; if the party that I had it sold to at a $1.28 had it sold to one at $1.26, then we make a settlement of that—agree between ourselves that we will let that off.

Q. Call it sort of a stand-off?

A. Offset or stand-off.

Q. As between the books?

A. As between the commission men.

Q. And the customers still have the transactions with you?

A. With me just the same.

Q. According to his orders?

A. According to his orders, and I report it no alteration.

Mr. DENT: And you always had just as good a customer on the board, did you?

A. I had some one on the board all the time.

Q. When you changed from Crea & Davis to Hinckley & Co. you got as good a customer, didn't you?

A. Crea & Davis failed soon after, but Hinckley did not, but in their case the party is good. If it had gone down it would have been all the better to me, but not for Mr. White. I understood that I guaranteed the trades to Mr. White, and if the board of
131 trade failed I should make it good to him to the extent of my power.

Q. The effect of those transfers was that you put some of your money in?

A. Yes, sir.

Q. And kept a customer for Mr. White who was just as good as the other one?

A. Yes, sir.

Q. And probably margins were limited as between members of the board of trade to some extent?

A. Yes, sir; Crea & Davis had it sold to Hinckley, I think, at $100; they had *of* margins up on theirs, and by putting it down to me released him and I had the margin.

Q. The money you paid out in that way, together with the amount you paid after complaints were made against you before the board of trade, made up the full amount of $11,412.50?

A. Including my commissions, made it up; yes.

The COURT: If you bought, for instance, on the board of trade 5,000 for Mr. Dent at a $1.00 a bushel, and you sold 5,000 for Mr.

Stiles at a $1.00 — bushel, those two transactions equalized each other, would they not?

A. Yes, sir. You mean for the two?

Q. Yes.

A. If I sold it to Mr. Dent at a $1 a bushel—if I had wheat sold to Mr. Dent at a $1.00 — bushel, and Mr. Dent had it sold to
132 Mr. Stiles at a $1.00 a bushel, and Mr. Stiles had it sold to me at a $1.00, then we got together and we cut that trade right off our books.

Q. And still you would stand responsible to Mr. White?

A. Yes, sir.

Q. For the transaction that you had contracted, and you would have a customer for him?

A. Always do it; if I had that sold to him at a $1.00 and he had it sold to Mr. Stiles at a 1.00½ and Mr. Stiles had it sold to me at a $1.01 it would be the same, only we would pay whatever profits there were between parties; of course we would not scratch it off if parties had it bought of one without they wanted the profits.

Mr. DENT: The little difference would be equalized by cash payments?

A. They would, sir, the next morning after this arrangement was made.

Plaintiff here rested his case.

Whereupon the defendant, to maintain the issues on his part, introduced the following testimony:

The COURT: I want to ask Mr. White one question.

JAMES B. WHITE, being recalled, was examined by the court and testified as follows:

133 Q. In most of the cases where you bought or sold you closed out. If you had bought or sold for a given month, say, for illustration, July, you closed before the end of the month in some way—you either sold out or covered it, as you call it?

A. All except this one deal.

Q. Except this one transaction?

A. This one transaction.

Q. So that you had the whole of the month to perform the contract in either to deliver or receive as the case might be?

A. Yes, sir; or sometimes two or three months.

Q. If the time within which you had to perform your contract did not elapse of course there would be no tender either way—for instance, you sold a man wheat for July?

A. Well, yes.

Q. Now, during the whole of the month of July you had an option at what time you would tender?

A. Yes, sir.

Q. And if you had bought wheat of a man for the month of July he had the whole month of July in which to tender to you?

A. Yes, sir; the buyer has to close his trade on the first and the seller has to the last of the month.

Q. The buyer closes the first?

134 A. The buyer the first and the seller the last, or, if he pleases, he can close between times.

The defendant's counsel offers and reads in evidence section 6 of rule 26, page 52, of the rules of the board of trade, in force January 1st, 1882, which is as follows:

"Rights of commission merchants.

"SEC. 6. In case any member of the association, acting as a commission merchant, shall have made purchases or sales by order and for account of another, whether the party for whom any such purchase or sale was made shall be a member of the board of trade or otherwise, and it shall subsequently appear that such trades may be offset and settled by other trades made by said commission merchant, he shall be deemed authorized to make such offset and settlement, and to substitute some other person or persons for the one from or to whom he may have purchased or sold the property originally: Provided, That in cases of such substitution the member or firm making the same shall be held to guarantee to his or their principal the ultimate fulfillment of all contracts made for account of such principal which have been so transferred, and shall be held liable to said principal for all damages or loss resulting from such substitution."

Also notice, dated "Board of Trade of the City of Chicago,

135 secretary's office, Chicago, April 23, 1883;" address, G. M. Barber, Esq., signed A. H. Gunn, assistant secretary, which is as follows:

BOARD OF TRADE OF THE CITY OF CHICAGO,
SECRETARY' OFFICE, CHICAGO, *April* 23, 1883.

G. M. Barber, Esq.:

A complaint against you by A. H. Bliss & Co. has been filed in this office, a copy of which is herewith handed to you for information. The case will be heard by the board of directors of this board at their rooms on Tuesday, Ap'l 24, at 3.15 p. m., at which time you will please be *be* present, with such defense statements or witnesses as you may wish to present.

Respectfully, A. H. GUNN,
Ass't Secretary.

Also copy of complaint, dated Chicago, April 21, 1883, addressed to the president and directors of the board of trade, signed Ulich Bush & Co., which is as follows:

CHICAGO, *April* 23, 1883.

To the president & directors of the Chicago Board of Trade:

We respectfully beg to represent that Geo. M. Barber is indebted to us in the amount of $1,043.75, the same being difference due us on wheat sold to us for delivery in July, 1882; and, payment having been refused, we ask that said Geo. M. Barber be disciplined under the rules of the board.

Yours respectfully, A. H. BLISS & CO.

Also bill, dated Chicago, March 31st, 1883, G. M. Barber, Esq., to Ulrich Busch & Co., which is as follows, to wit:

136 CHICAGO, *March 31st*, 1883.

G. M. Barber, Esq., to Ulrich, Busch & Co., Dr., 191 & 193 East Washington street.

To diff. 5,000 July 2 spring wheat ---------- 1.35
1.24⅜
.10⅝ $531.25

Also check, dated April 24, 1883, drawn in favor of Ulrich, Busch & Co., which is as follows, to wit:

No. 11884. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of Ulrich, Busch & Co. five hundred thirty-one and $\frac{25}{100}$ dollars, $531.25.

G. M. BARBER.

[Rev. stamp, 2 cents.]

Certified, April 24, 1883.

——— ———,
Teller Corn Exchange Bank, Chicago.

Endorsed: "For deposit at International Bank to the credit of Ulrich, Busch & Co. International Bank, paid. Paid through Chicago clearing-house, Apr. 25, 1883. Nat'l Bank of Illinois."

It was also considered that other notices, complaints, bills, and checks were offered and read in evidence, being substantially the same as the foregoing.

To the introduction of all rules, notices, complaint-, bills, & checks the said White objected at the proper time, which objection was overruled & the same was admitted in evidence.

To which ruling the said James B. White duly & at the proper time excepted.

137 GEORGE M. BARBER, the defendant, being recalled as a witness in his own behalf, was examined in chief by Mr. DENT and testified as follows:

Q. Mr. Barber, what arrangements were made with you by Mr. White or in his behalf with reference to doing business for him?

A. Well, how far back do you want I should go, to the commencement?

Q. Yes, sir.

A. I know Mr. Maltman first spoke to me about it.

Q. You were a member of the board of trade, were you, of the city of Chicago?

A. Yes, sir.

Q. And a commission merchant?

A. Yes, sir. Well, I have been very little commission merchant.

Q. You were dealing on the board of trade, however?

A. Yes, sir; trading here all the time.

Q. And if you did not seek commission business you yet did some commission business?

A. Yes, sir; what trade came to me without any seeking I never cared for it.

Q. Now, you may go on and state as to your arrangement.

A. Well, the arrangement I made with Mr. Maltman was simply
138 that he had a party in the country; he told me he had done business for him as his agent here, I believe, very much the same as Mr. White stated it himself; he wanted to trade on the board of trade and wanted I should do it; he wanted some responsible man to do it and wanted I should do it, and made arrangements with him to do his business.

Q. What was to be the character of the business to be done by you for him?

A. Well, I don't remember that there — anything particular said more than that he wanted to trade there—buy and sell grain; commence by selling some grain there, I think, or possibly buying it.

Mr. STILES: The question, I think, Mr. Dent, is calculated to bring from the witness his conclusion.

The COURT: Let him state what was said.

The WITNESS: Well, that was some five years ago, and I cannot remember what was said.

The COURT: You can state the substance of it.

The WITNESS: The substance of it was that Mr. White, of Fort Wayne, Indiana, wanted to trade on the board—make trades there—and he wanted to know if I could do the business for him, and I told him I would—that was the substance.

Mr. DENT: What did you say?

A. I told him I would put the trades right down in his
139 name first, because I knew him well and Mr. White was a stranger to me. Afterwards, as Mr. White said, he came up within a month or two, and I was introduced to him by Mr. Maltman, and I kept statements much the same way as I had always done, although I kept them straight in his name from that on afterwards.

Q. You can state what the transactions were generally that you had for Mr. White.

A. It was buying and selling grain, pork, possibly sometimes lard, wheat, corn, oats. I always bought when he told me to buy and sold when he told me to sell.

Q. You observed his orders, then?

A. I did, sir; tried to strictly. I think I did.

Q. In saying that you conducted the business in Mr. Maltman's name as between you and Mr. White, in the first instance, what did you say was the reason for that?

A. Well, my remembrance of it is that I knew Mr. Maltman and did not know Mr. White, and that I knew Mr. Maltman was perfectly responsible and did not know Mr. White. I did not know anything but that he was, and it is quite possible that it was, as Mr. White says, he did not care to be known—that might be it.

140 Q. You do not know whether — or cannot remember that?

A. I cannot say positively to that.

Q. But when you went on the board of trade to execute an order given you by Mr. Waltman for Mr. White, with whom did you deal then?

A. In what *from*?

Q. On the board of trade, with whom you did deal?

A. With the members of the board—any of them.

Q. And you would be a contracting party with a fellow-member of the board of trade?

A. Yes, sir.

Q. That is, you would make your transactions——

A. With some member of the board of trade.

Q. Was that universally the case?

A. Yes, sir.

Q. Either some member or some firm, I suppose?

A. Certainly, I would make it with a member, because none but member- can trade; I could not have made a trade without it being a member, and that member might have been a member of a firm, and the trade, when it went down, went down to the firm, but the trade itself was made with a member of the board of trade.

Q. Mr. White has said that you told him you closed your transactions every day or you protected yourself in some such way.

A. Yes, sir.

Q. Do you remember of any such conversation as that?

141 A. I remember of having a conversation with Mr. White some time, in which I told him that I never hung onto a deal. That was the time that he was hanging on and the trade was a good deal against him; that I generally closed them every night—generally. He stated that very nearly.

Q. Well, by closing them every night, what did you mean?

A. Not that I had not trade open, by any means; not but what I was responsible for all the trades made that day, and would be responsible until the contracts that I had made were finally carried out, but that if I had sold a certain amount I also bought a certain amount of other parties, making me even on the market, as we call it. I might have had 500,000 or 800,000 bushels of grain open on each side of my books, bought and sold in each case, — the fluctuations of the market would affect me.

Q. But your endeavor was to make purchases and sales at that?

A. An equal amount on each side.

Q. Pretty well protected?

A. So that at night, when I could go home, I would be pretty well even; sometimes a little one way, sometimes the other.

Q. You may state whether anything was said, as between you and Mr. White, as to whether his business would be connected by you in that way or not.

142 A. Oh, there was not, most assuredly, because it could not be very well; when he was at home he could not always close trades up as I could, standing there all the while.

Q. In respect to his business, his orders were to govern, were they not?

A. Always; never bought or sold anything for him without an order.

Q. Did he give you unlimited discretion at any time in his orders to make sales or purchases?

A. Well, it was always to do so and so, but to do it the best I could—a little discretion came in—that I could perhaps wait a few minutes. If he was standing there sometimes he would give me verbal orders; the discretion only lasted for just a short time; it was to sell or buy a certain amount, and if I thought that he wanted to sell it and thought I could get more by waiting a minute or two, to wait; that was all the discretion that came in.

The COURT: Mr. Barber, I did not quite understand what you mean when you say you told him you always closed your deals. Do you mean those that you made on your own account?

A. On my own account; that I bought and sold an equal amount.

Q. That is what I wanted to know—whether you meant
143 the sales you made on your own account or all the sales you made for others.

A. Only my own, for myself.

Q. So that when you traded yourself you bought upon one side and sold upon the other an equal amount?

A. About the same amount each; be perhaps—well, sell first in the morning and generally get home about even; that I did tell him.

Mr. DENT: Now, you may state whether in the conversations you had with Mr. White there was anything said by you or him, to your knowledge, to the effect that he was going to gamble on the board of trade or that you would gamble for him.

A. Certainly no recollection of anything about it.

Q. If any one of your customers should talk with you in that way——

Objected to.

Q. I wish to know whether you would have a recollection of that matter if he talked with you in that way.

A. I should suppose I would.

Q. Coming down to the transactions with reference to the July wheat deal, do you remember of having conversations with Mr. White as to the July wheat deal?

A. I know that I had quite a number.

Q. Did you make any suggestions to him; and, if so, you can state what you suggested to him, with reference to that deal?

144 A. Well, I made a very few, for the reason that I always stated that I did not consider that was part of the way I earned the commission that I received by advising. Parties give me orders and I would execute them; but I do remember that the little I said was against his selling so much July spring wheat, that I was afraid it was cornered, but that I did not say very much, be-

cause I thought Mr. White was perfectly responsible; it was simply going into the future, and that one man perhaps knew as much about the future as another after all, and I did not want to advise him too much.

Q. Did you know anything about a corner, really?

A. Nothing more than the talk as though there was a corner; no personal knowledge; nothing at that time.

Q. Were you in any way concerned in it?

A. Not at all.

Q. What was the form of contract you made for Mr. White on the board of trade? You may take up the July wheat deal because that is the one in question.

A. Well, I contracted to sell a certain amount.

The COURT: Haven't you a form of the contract here?

Mr. DENT: The contracts were not in writing, I believe, your honor, but they are placed on a card—a check, and Mr. Barber may explain how that is.

145 The WITNESS: I agreed to sell to those parties a certain amount of spring wheat, deliverable at the seller's option, at any time during the month of July, 1882, subject to the rules of the board of trade. That is the sum and substance.

Q. When you made that agreement what was done as evidence of it?

A. My trades were entered upon the books, and the clerk checked them with the parties, to be sure there was no mistake about it, at their offices.

Q. At the time of making the sale, what entry would be made while the parties were both present?

A. Just on the card sold.

Q. Have you one of the cards here?

A. I presume I have, in my pocket.

Q. State one of the trades which remained open at the close of July, 1883. You can illustrate it.

A. Yes, sir (producing cards); here I see July spring wheat sold to H. G. Gaylord at $1.25\frac{1}{8}$.

Mr. STILES: Are you reading from what is written on the card?

A. I was; yes.

The COURT: That is one of the transactions?

A. That is one of transactions.

The COURT: Let me see the card. (Card handed to the Court.) This is not your card?

A. Well, it is one I happened to borrow.

Q. You borrowed the card?

A. Yes, sir.

146 Mr. STILES (looking at card): Let me suggest that the wheat is not mentioned here. This is the way it reads: "To M, July, H. G. Gaylord, $1.25\frac{1}{8}$, J. B. W." I mention that to show that the witness has not read from the memorandum; it needs explanation that it is wheat; it does not speak for itself.

The WITNESS: Well, I was so use to this.

Mr. STILES: That is what I supposed; I supposed that the witness read it as he understood it.

The WITNESS: It is the hurried way of doing business.

Mr. DENT:

Q. You would know whether it was wheat, or corn, or oats?

A. I would.

Q. You would know that from the price, I suppose?

A. Yes, sir.

Q. That memorandum was made at the time this particular process would be gone through with?

A. Well, this was defaulted on; it was entered on the books.

Q. It was entered on the books, and then what would be done after it would be entered on your books?

A. Well, I should have put up margin when he called for it.

Q. But would it be checked with other parties?

A. Yes, sir; I spoke about that before.

Q. You would send out the card and it would be checked?

147 A. Yes, sir.

Q. Is that card checked in that way?

A. Yes, sir.

Q. There would be a check showing that it was entered alike?

A. And that he had been to Gaylord & Co. to see that they had it the way he had, only opposite, of course—that they had 10 wheat bought instead of sold, and if the price agreed——

Q. So that their books would correspond with yours?

A. Their books would correspond.

The COURT: That is, you send out your messengers and checked up?

A. Checked up the trade.

Q. With the brokers with whom you dealt, the different trades?

A. That is to see that there is no mistake.

Mr. DENT: I wish to ask you, Mr. Barber, whether you had any different understanding with any person with whom you dealt for Mr. White than that the grain was to be delivered or was to come from them?

This question was objected to because it is incompetent & immaterial & because Barber could not make such a contract to bind White to deliver or receive grain, his authority being to trade in differences only.

148 Objected to; the question should be what was the understanding.

The COURT: That would be a proper question.

Mr. DENT: Well, what was the understanding or contract?

A. My understanding was—I don't know as I can say what the other man's was.

The court then adjourned until to-morrow morning, 10 o'clock, at which time the direct examination of the witness, GEORGE M. BARBER, was resumed by Mr. DENT, as follows:

(Last question pending read, as follows: "State whether you had any different understanding with any of the persons with whom you dealt for Mr. White than that the grain was to be delivered or was to come from them.")

The COURT: The question was objected to; the word agreement would probably cover the objection; he may answer it as it is.

A. I had no other agreement with them.

Mr. DENT: You will please state whether any other than absolute agreements, positive agreements, to sell or to buy were recognized by the board of trade?

This question is also objected to by Mr. White, because he is not bound by the rules of the board, in that behalf.

Mr. STILES: I do not think that is a fair question; they have the rules of the board so far as that goes.

149 The COURT: There may be certain usages of the board aside from the rules.

Mr. STILES: I think that it is asking the witness to characterize the agreement and say whether any other than certain valid agreements were recognized on the board of trade. I think the way would be to show what agreements were made.

The COURT: Mr. Dent, haven't you got that already, so far as Mr. Barber's testimony is concerned? He states what his agreement was, and states the terms of the agreement. It seems to me that that is enough.

Mr. DENT: The point at which I was aiming was to show that there is a clear line of distinction drawn by the board of trade as against contracts which are not absolute in their character—that is, that the board of trade does not recognize what we know in common speech as puts or calls, or mere options to sell or options to buy.

Mr. STILES: This is not claimed to be a put or call.

The COURT: Well, that may be one part of your case. The first question, then, that would arise is that this clause, by their printed rules or constitution by which all the members are bound, — or is it disclosed by any usage on the board.

Mr. DENT: My impression is that it is disclosed by usage—

150 that is, that it has been settled and fixed by usage on the board of trade—and I think it is not pointed out specially by the written rules. Of course we would all understand that it would not be presumed as against the board of trade that it would recognize any illegal contracts, but inasmuch as I understand there is a usage there to discriminate and throw out any contracts that are illegal in their character I wish to show that that usage does prevail and that the witness knew it prevailed on the board of trade.

The COURT: General Stiles, I think he may prove that and you may except to it. Mr. Dent may put the question in a little — form as to what the usage of the board of trade was with reference to transactions known as puts and calls. Let the question be free from the defect of being leading or anything of that kind.

Mr. DENT: Do you know, Mr. Barber, whether there was any usage on the board of trade with reference to recognizing or not recognizing puts and calls or mere options to buy or options to sell?

A. I know they were not recognized and enforced by the board—those were not.

Q. I will go back a little, I think, in order of time, and ask you as to a conversation which has been supposed by Mr. White
151 to have been had between yourself and him on the 30th of November, 1879, and when, if I remember rightly, he said he had contracts to buy which were about to mature. Do you recollect such a conversation?

A. I don't remember anything particular about it; no, sir. I think he is correct in saying that it was about that time that I first met him, and if he had, as he has testified, — that I had 100,000 corn bought for him, I should presume we had conversation about it, if he was here that day; but, as to being positive about it, I could not state.

Q. Then, as to the conversation about the matter of delivery of the corn, what was that, if any?

A. That he must either sell the corn that day or prepare to pay for it; that it was December corn that he had bought, and that the chances were strongly that the corn would be delivered to me the next day, and that he must either furnish me the money to pay for it or order me to sell it, so that I would have a place when it was delivered to me to put it or to make arrangements to transfer it.

Q. In the actual operation of things under Mr. White's trades how was it as to one trade setting off another? What system was pursued by him in giving orders, if any, in that respect?

152 A. I do not know that he gave any specific orders in regard to it; he knew that I did it.

Q. How was it operated? Did he give an order to buy wheat or corn, whatever it may have been, seller's option, during that month, and an order to sell the same option during the same month?

A. Yes, sir; often.

Q. What would be the effect in those cases?

A. That I would have it bought from one party and sold to another, in all probability.

Q. Then what would be the course of business that might be pursued or that was usually pursued?

A. That, where we could, we made these offsets, and got the trades off the books release margins, &c.; where we could not, the parties I would have the corn, whatever it might be, bought of would deliver it to me, and I would then deliver it to the parties to whom I had it sold.

Q. Something was said by Mr. White as to a remark having — made by you, substantially, that only a few firms on the board of trade did a legitimate business. Do you recollect any conversation with Mr. White on that subject; and, if so, what was that conversation?

A. Well, I think Mr. White, seems to me, must be mistaken
153 about that, if that is the way he puts it. I know that I had

conversations with him; so many of them, that it is hard to designate any particular one. I have no doubt at all that I told him that a great number of the trades were settled-up offsets, but, of course, in the immense amount of trading that was done there a small proportion was actually delivered; that there were settlements made; I presume I told him that.

Q. Well, I am asking for your best recollection on this subject as to what you said to him about the work on the board of trade being legitimate or illegitimate?

A. No, sir; I never told him that it was legitimate; that is sure, because I never considered it in that light, and I know I never told him that.

Q. You may state whether it would be possible, in view of the volume of business on the board of trade, to make deliveries in the way of turning the property over from one to another.

A. I should not consider that it would be possible to deliver the grain in the quantities of trading there, scarcely.

Q. The volume of transactions was then very large, was it not?

A. Very, indeed.

Q. You may state whether you yourself have at times render-
154 contracts such as these *of* Mr. White received, and delivered property?

A. I have, sir.

Q. You may state whether they have been considerable or not.

A. Oh, I know I have received as high as 60,000 bushels in a day or more; I know that.

Q. You gave Mr. White a statement on the 30th of October, 1882. I wish to ask you what conversation you had with him at the time you gave him this statement. I will show the statement to you (handing witness paper).

A. Well, I could say that the conversation you probably wish to know about was just before I gave the statement; the statement is not made out at that particular moment.

Q. I did not mean precisely the moment.

A. Mr. White came to me and said he would like to have me get him a draft for that what there was coming to him—I could not state his exact words—or what was due him, and, as this July wheat deal at that time was open, I had given him credit for all the money that he had paid me, leaving this question of the short July wheat open. I says to him, "Mr. White, I am perfectly willing to give you all the money I have of yours to your credit, only retaining enough to protect me in this July wheat deal, which is the difference in price at which I have sold this 100,000 bushels of
155 wheat and the settling price for the same, as fixed by the committee of the board of trade." Mr. White replies, "That is all right, Mr. Barber; I want you to be fully protected; just give me a draft for the balance." I then did get him a draft for the balance, which was $978.50; gave him this statement.

Q. How many trades were unclosed for Mr. White at that time?

A. 100,000 bushels.

Q. With how many different parties?

A. I can't state exactly; I presume 10 or a dozen.

Q. Perhaps you can tell by looking at the receipts or rather at the certified checks (handing witness papers).

A. I can, sir; there is a number of them—twelve.

Q. The sales had been in lots of 5,000 bushels?

The COURT: You say there were twelve trades?

A. Twelve parties—twelve members of the board.

Mr. DENT: There were twenty contracts, were there not?

A. There were twenty-five thousand bushels lots, but some of them I had more than five with. There were twelve distinct parties there that had the 100,000 bought.

Q. Twelve members of the board of trade?

A. Members or firms.

Q. You may state whether those contracts remained open and unsettled until you paid the money over upon them, as you suggested, on the 24th of April, 1883.

156 A. They did, sir, in the exact shape they were at that time.

Q. The changes or transfers of which you spoke yesterday were before the 31st of July, 1883?

A. They were, sir.

Q. Substituting in perhaps three or four instances new contracts of the same character, but with different parties?

A. That is it.

Q. That substitution requiring you to pay out some of the money, as I understood you?

A. Yes, sir.

Q. Was that sum that you paid out represented in part by this amount of $11,412.50?

A. It was, sir; part of that money.

Q. And in the statement that you rendered at that time you put the sum in gross, as I understand, not giving particulars as to amount of money you had paid out?

A. No, sir.

Q. Making a difference between $1.35 and the contract price?

A. At the time I sold this wheat for Mr. White—that he knows he was short, as he will testify himself, I have no doubt—I telegraphed him the price at which the wheat was sold. He knew he was short at those prices, and the difference between those prices and those fixed by the board amounted to $11,412.50.

Q. There was a reference, Mr. White, I believe, to a conversation with you about the 31st of March, 1883. Do you remember

157 such a conversation?

A. I do, sir.

Q. What was that conversation?

A. Mr. White came into my office somewhere about four o'clock in the afternoon—Saturday afternoon. I told him I was very glad to see him, as since a recent decision of the supreme court the parties to whom I had this wheat sold were sending—their bills new, and some of them threatened to make complaint against me before the board of directors if I did not pay them. I was very glad to see him, and talk over with him, and see what was to do next. He

replied, when I asked him what can we do now, he says, "Oh, yes; we must fight them; we must fight them." I replied, "Very well, but how are we going to fight them now?" and he branched off into a general conversation, talking about the rascality of the deal, which I had heard a good many times before. The talk did not last but a short time, and all of a sudden—we were sitting right close together—he got up and put out his hands to shake hands with me, "Bid you good-bye; I have got to take the 5 o'clock for home." I think he said five o'clock or 5.15. I remarked to him, says I, "But, Mr. White, before you go I wish you would see"—I then said either Mr. Burke, your attorney, or Mr.
158 Burke," as I supposed at that time Mr. Burke was his attorney—was the one I mentioned. I didn't know he had any other. "Before you go *and* arrange some way to keep me on the board; protect me there," says I, "then we will fight it as long as you want to, but," says I, "I cannot be put off the board because that is where I make my living." Mr. White says, "All right; I will go and see them." Went out. That is the last of that conversation.

Q. You say the parties were sending in bills to you at that time and threatening to take proceedings on the board of trade against you.

A. Yes, sir.

Q. Had they not sent in bills before?

A. Yes, sir.

Q. In August before?

A. Yes, sir.

Q. When they sent in the bills at first what did they charge, what price did they?

A. I think a $1.36 a bushel; the difference up to a $1.36.

Q. But after the award of the committee they sent in their bills?

A. They reduced them to a $1.35.

Q. I will call your attention to a matter of the payment of $5,000 to you, credited in the account which was accepted, I believe,
159 on or about June 12th, 1882, and ask you if there was any conversation at that time, and what occurred at that time?

A. I had no conversation at that time with Mr. Maltman.

Q. Mr. Maltman was White's agent, was he not?

A. Yes, sir.

Q. What was the conversation?

A. At that day, on the 12th of June, he had a draft for $5,000 which he told me he was instructed by Mr. White not to hand over to me unless I would give my word that I would not buy in the wheat unless by his orders, but would allow him to default, and Mr. Maltman said that Mr. White said he would settle; let the committee fix the price, and he would settle that way, if possible, if he did not decide to buy it in.

(The above answer was, upon request of the court, read by the reporter, and the witness thereupon further said:)

"Settle that way if possible." That is not exactly the way I said it; that if he did not decide to buy it in I was to allow him to de-

fault, or that he would then settle at the price fixed by the committee under the rules of the board.

Q. Here is a telegram from Mr. White, dated August 5th, 1882; if you will please, read that to the jury.

A. "August 5, 1882; date, Fort Wayne, Indiana; to G. M.
160 Barber, board of trade: Don't cancel the July trades. My attorneys here believe the tender we made is good and can be enforced. J. B. White."

Q. Now, what action did you take with reference to this direction with Mr. White not to arrange the trades or not to cancel them; that is the expression he used; what action did you take in the matter?

A. Well, for some time we let them remain just as they were.

Q. And as to the proceedings in court, what was done by you, if anything, and how was that matter arranged?

A. Well, I returned from the East. I had been there for a month or more. I had been out of the city and returned just at the time those proceedings were commenced—somewhere about the 10 or 12 of September. The day I returned I was informed by Mr. Maltman—also by my clerk—that Mr. White had made all the arrangements to join in the injunction proceedings; that they were all getting out injunctions to prevent the board of trade from suspending the members, and arrangements were all made, and that I was to go to Mr. Burke's office—J. E. Burke's office—and sign some papers, and the next morning I did go there.

Q. Had you been advised, prior to that time, of the decision of the committee of the board of trade to fix a settling price on July wheat?

161 A. I had; yes.

Q. You may state whether Mr. White had been advised by you or whether you took steps to cause Mr. White to be advised of the action.

A. No, sir; I did not. I was away at that time.

Q. You were away at that time?

A. Yes, sir.

Q. When did you go away, if you remember?

A. Well, the first days of August, I think; it was likely about the 3rd; but I cannot be quite positive as to the day.

Q. Do you remember at what time you returned?

A. My impression is that it was the 10th day of September. It was the day before I signed these papers; at least that will fix the date.

Q. You can state, if you please, whether this is the copy of the bill which you signed at that time (showing witness document).

— That is, sir, I presume.

Defendant offers in evidence a certified transcript of the case of George M. Barber *vs.* The Board of Trade of the City of Chicago, bill filed on the 11th of September, 1882, superior court of Cook county, which was objected to by counsel for plaintiff and said objection overruled by the court; to which ruling of the court counsel for plaintiff then and there excepted.

162 Which said transcript is as follows:

STATE OF ILLINOIS, } ss:
Cook County, }

Superior Court of Cook County, at the September Term, A. D. 1882.

To the honorable the judges of said court, in chancery sitting:

Your orator, George M. Barber, of the city of Chicago, State of Illinois, bring this his bill of complaint against the Board of Trade of the City of Chicago, and thereupon your orator complain and say:

That they are and for upwards of six years last past have been a commission merchant, broker, and member of the Board of Trade of the City of Chicago, doing business on said board; that said board of trade is a corporation duly established and existing under a special act of the General Assembly of the State of Illinois, approved February 18, 1859, and entitled "An act to incorporate the Chicago Board of Trade;" that said board of trade is authorized by said act "to receive and hold property and effects, real and personal, by gift, devise, or purchase, and dispose of the same by sale, lease, or otherwise; said property so held not to exceed at any time the sum of two hundred thousand dollars;" that said board of trade possesses a valuable franchise and has a surplus fund of more than one hun-

163 dred and seventy-five thousand dollars in its treasury or invested in interest-bearing securities; that said association has at present about eighteen hundred and seventy members; that as members of said association your orator possesses valuable rights and privileges; that by the rules of said association the admission fee is fixed at five thousand dollars; that certificates of membership of said association are transferrable under the rules, are bought and sold on the market, and have a market value of three thousand and eight hundred dollars each.

The 7th and 8th sections of said act of incorporation are as follows:

"SECTION 7. Said corporation may constitute and appoint committees of reference and arbitration and committees of appeals, who shall be governed by such rules and regulations as may be prescribed in the rules, regulations, or by-laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the association, or by other persons not members thereof. The acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses and issue subpœnas and attachments compelling the attendance of witnesses the same as justices of the peace, and in like manner directed to any constable to execute.

164 "SECTION 8. Where any submission shall have been made in writing and a final award shall have been rendered and no appeal taken within the time fixed by the rules and by-laws, then, on filing such award and submission with the clerk of the circuit court, an execution may issue upon such award as if it were a

judgment rendered in the circuit court, and such award shall thenceforth have the force and effect of such a judgment and shall be entered upon the judgment docket of said court."

A copy of the rules adopted by said board of trade and in force on the 1st day of January, 1882, and ever since and now in force, is filed herewith.

Your orators further say that during the months of May and June, 1882, they sold on the market on said board of trade to divers members of said board large quantities of number 2 spring wheat, amounting in the aggregate to 50,000 bushels, at prices ranging from $1.23 to $1.28⅞ per bushel, said wheat to be delivered at the pleasure of your orators at any time during the month of July, 1882; that most of the aforesaid sales were made to parties who purchased for or on account of Philip D. Armour and C. J. Kershaw, members of said board of trade, or for or on account of the firms of which
165 the said Philip D. Armour and C. J. Kershaw were members, respectively.

Your orators further say that, owing to causes hereinafter stated, they did not, during the month of July, 1882, or at any time since, deliver any number 2 spring wheat on their respective contracts.

Your orators further say that prior to the maturity of the contracts made by your orators as aforesaid the said Philip D. Armour and C. J. Kershaw and others, their confederates, entered into a scheme and combination to force an artificial and unnatural rise in the market in the price of said wheat for the purpose of obtaining advantage of and defrauding your orators and others, whose contracts or necessities compelled them to purchase or use the variety of wheat above described; that in pursuance of their aforesaid scheme and unlawful combination, and for the purpose of preventing your orators and others in like situation from fulfilling their contracts, and thereby extorting from your orators and others in like situation unreasonable damages, the said Philip D. Armour and C. J. Kershaw and their confederates not only bought and held or shipped to distant markets all or nearly all the number 2 spring wheat in store and in market, but they purchased for future delivery, to wit, for delivery in July, 1882, 10,000,000 bushels of number 2 spring wheat in excess of the entire market supply; and
166 your orators say that by reason of the engrossment of number 2 spring wheat as aforesaid the market became cornered, and your orators and others in like situation were unable to obtain for delivery on their aforesaid contracts wheat of the variety above mentioned.

Your orators further say that section 1, rule 27, of the rules of the said board of trade is as follows:

"SECTION 1. In case any property contracted for future delivery is not delivered at maturity of contract the purchaser may, if he so elect, consider the contract forfeited; or he may purchase the property on the market for account of the latter by one o'clock of the next business day, notifying him at once of such purchase; or he may require a settlement with the seller at the average market price on the day of maturity of contract; and any damages or loss

due to the purchaser by reason of such purchase or declared settlement shall be due and payable by the seller immediately: Provided, That this section shall not be construed as authorizing extortionate claims based on values manipulated for the purpose of securing such claims; and, in any case of disagreement between members of the association as to the equity of any claim based on action taken by the purchaser under the provisions of this
167 section, either party to such disagreement may call upon the president of the board for the appointment of a committee to determine such matters of dispute; whereupon the president shall direct five discreet and reputable members of the association (to be approved by the board of directors) who are not in any manner interested in the matter in controversy, who shall, without unnecessary delay, organize, by electing one of their members chairman, and proceed to hear and determine the question as to the equitable measure of damages, if any, to be paid by the party in default. Said committee shall, before entering upon their duties, be sworn to fairly and impartially hear and determine the questions presented to them. They shall receive such statements or evidence under oath as either of the parties may present; and, in order that their investigation shall be thorough and impartial, notice of their appointment and of the time and place of the hearing shall be announced on 'change, and an invitation given to any member of the association to appeal before them with evidence of any facts having a bearing on the subject-matter they are appointed to consider. The committee shall be authorized to determine the relevancy of any testimony presented to them, and if they deem it necessary, may call for any available
168 evidence that may not be voluntarily tendered. The said committee, in determining the measure of damages to be paid by the defaulter, shall be authorized to consider whether or not the value of the property in dispute has been exhanced by combination or by any individual for the purpose of extorting unreasonable damages, and shall also consider the effect on values produced by sales in excess of the marketable supply, and, in view of all the facts presented and having reference to the duty of the seller to specifically fulfill his contract, shall determine the just and true value of the property defaulted on at the time of the default, and by the value so established shall determine the measure of damages to be assessed, both of which shall be stated in their findings, which shall be made by majority vote of the committee and in writing, signed by the chairman of the committee. The decision of said committe as to the value of the property in question on the day to which their decision applies shall be deemed its true value at that date, and shall be accepted and recognized as establishing said value as the equitable basis for all settlements and adjustments of similar defaults by members of the association on that day; and values so established shall be respected as final by the board of directors and committees of arbitration, and appeals of the association. The committee appointed under the provisions of this section shall be entitled to twenty-five (25) dollars for

169 their services, to be equally divided between them; said fees shall be paid in advance by the party upon whose request the committee is called, and shall be finally paid as the committee shall determine and state in their findings."

Your orators further say that the firm of Irwin, Orr & Co. were agents and brokers of and confederates with the said Philip D. Armour and C. J. Kershaw and others in the aforesaid scheme and combination to corner the market and establish a fictitious market price for number 2 spring wheat; that in pursuance of the aforesaid scheme, and with a view to accomplish more successfully their said unlawful purposes through the instrumentality of the said board of trade, the said Irwin, Orr & Co., on the 1st day of August, 1882, addressed to the president of said board of trade a written request as follows:

"CHICAGO, *Aug.* 1, 1882.

"R. W. Dunham, Esq., pres.

"DEAR SIR: Will you please call a committee to decide a settling price on number two spring wheat purchased by us for July delivery and defaulted yesterday?

"Yours truly,

"(Signed) IRWIN, ORR & CO."

Whereupon the vice-president of said board of trade, without the absence or disability of the president being shown or made to appear, and professing and assuming to act under the power
170 conferred by section 1, rule 27, aforesaid, and professedly in accordance with its provisions, selected five members of said association as a committee for the purpose, and for no other purpose than that specified in said written request of the said Irwin, Orr & Co.

Your orators further say that section 1 of said rule 27 requires that a committee appointed under its provisions shall, before entering upon their duties, be sworn "to fairly and impartially hear and determine the questions presented to them;" and your orators say that the only oath administered to said committee was administered by the president of said board of trade; that the president of said board had no authority or power to administer said oath, and that the same was illegal and void.

Your orators further say that prior to the commencement of the investigation before said committee your orators presented to said committee the following objections:

Sec. 1 of rule 27, under the provisions of which the committee claim the right to act, is void for the following reasons:

1. It is not in conformity either with the letter or the spirit of section 7 of the act of incorporation of the board of trade. By the section above referred to the power to settle matters of difference is conferred upon committees of reference and arbitration and committees of appeal, to be appointed by the corporation,
171 with power to issue subpœnas and attachments compelling the attendance of witnesses the same as justices of the peace, and in like manner directed to any constable to execute.

The jurisdiction of the committee of arbitration is, however, confined to such matters of difference as may be voluntarily submitted for arbitration. Section 1, rule 27, provides that upon the request of one of the parties to a disagreement and question of damages for an alleged breach of contract the president of the board shall appoint a special committee for the purpose of fixing the value of the property and settling the measure of damages, by which both parties to the contract shall be bound. No power is given the committee or parties in interest to compel the attendance of witnesses outside the members of the association, and then only to a limited extent. The investigation would necessarily be limited and unsatisfactory. It would not be in accordance with the laws of the land where important property rights are involved. The appointment of a special committee, either by the association or by any of its officers, for the purpose specified is prohibited by implication by the charter of the association.

2d. Neither the board of trade nor a committee appointed by any of its officers under the provisions of section 1, rule 27, has the power or legal right to fix or establish the value of the property or to fix or establish the measure of damages on default on contracts and then say that the parties shall be bound by such valuation or by the measure of damages so fixed or established.

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3d. In the call for the appointment of the committee it was not stated nor did it appear, nor at the time the *company* was appointed did it appear, that there was any disagreement between members of the association as to the equity of the claim based on are action taken by the purchaser under the provisions of section 1 of rule 27 of the rules and regulations of the board of trade.

4th. The call or request of Messrs. Irwin, Orr & Co. for a committee did not authorize the appointment of a committee for the purposes specified in section 1, rule 27, of the rules of the board of trade.

5th. The appointment of the committee was made by the vice-president of the board of trade without the absence or disability of the president being shown or made to appear.

6th. Objections are made to the committee on the ground that a portion of the committee is interested and biased in the matter in controversy.

All of which objections said committee overruled; to which ruling your orators then and there excepted, and your orators now submit that each and all of the aforesaid objections are well founded, and say that the facts set forth in said objections are true.

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Your orators further say that said committee had no power whatever, either under the said rules of the board of trade or otherwise, to compel the attendance of witnesses before them or to compel witnesses to answer any questions.

Your orators further say that Perry Trumbull, a member of said board of trade, appeared before said committee on behalf of your orators and other members of the said board of trade for the purpose of protecting the interests of those whom he represented, but your

orators say that said committee would not allow the said Trumbull to take any part in the proceedings, and excluded him from the committee room on the ground that he was an attorney-at-law, although he had not for several years last past been engaged, and is not now engaged, in the practice of the law.

Your orators further say that the investigation before said committee was not a fair, thorough, or impartial one; that your orators feel perfectly justified in saying, and therefor do say, that said committee in conducting said investigation in the manner in which they did willfully and persistently violated both the letter and spirit of said rule 27; that during the examination your orators repeatedly offered to prove by witnesses that the market for number 2
174 spring wheat had been cornered, and that the corner had been kept up until the end of July, 1882, but said committee would not allow the witnesses to give any testimony with reference to a corner or to use the word corner; that whenever in the course of the examination your orators or the witnesses used the word corner it was ordered by said committee to be stricken out, because the word was not used or to be found in the rules; that in the questions propounded by your orators and in the answers given by the witnesses said committee insisted that the word manipulate or manipulation should be used instead of the word corner.

Your orators further say that, for the purpose of showing the value of number 2 spring wheat on the 31st day of July, 1882, they called John J. Phelps and others as witnesses, and asked them to state what the quality of number 2 spring wheat was on that day and during the month of July, 1882, but said committee would not allow the witnesses to answer, on the ground that the questions were not pertinent; that said committee excluded all evidence of the quality of number 2 spring wheat deliverable in July on the contracts hereinbefore mentioned; that, for the purpose of establishing a basis for comparison and for the purpose of showing the true and just value of number 2 spring wheat on the last day of July, 1882, your
175 orators introduced witnesses to prove the market price and value of other grades of spring wheat and of other varieties of wheat on said last-mentioned day, and also to prove the market price and value of number 2 spring wheat during April, May, and June, 1882, but your orators say that said committee would not allow such evidence to be introduced on the alleged ground that it was not pertinent.

Your orators further say that, for the purpose of showing that the entire market supply of number 2 spring wheat had been engrossed and that the market had been cornered by the said Philip D. Armour and C. J. Kershaw and others, their confederates, your orators attempted and offered to show by several witnesses the quantity of number 2 spring wheat bought and sold by them and by each of them during the months of May, June, and July, the party or parties for whom or on whose account they bought and the party or parties for whom or on whose account they sold said wheat, but your orators say that said witnesses and each of them refused to answer questions relating to the aforesaid matters, and on the ground,

and on the only ground, that they did not want to disclose their private business or to tell who their customers or principals were;

176 and your orators say that said witnesses and each of them were excused from answering by said committee, for the reasons assigned by said witnesses as aforesaid; and your orators say that it is their opinion, and they so charge, that said committee wilfully and with the design of injuring and oppressing your orators ruled out the testimony offered by your orators as aforesaid and excused witnesses from answering questions, as above stated.

Your orators further say that a large number of *ex parte* affidavits, to wit, twenty or more, were introduced by the parties at whose instance said committee was appointed, and were received by said committee as evidence against the protest of your orators.

Your orators protested against the admission of said affidavits on the ground that they were not statements or evidence given under oath before said committee as required by said rule 27, and for the further reason that your orators had had no opportunity to cross-examine the parties who made them.

Your orators further say that section 1 of said rule 27 requires that all statements or evidence received by a committee appointed or assuming to act under said rule shall be under oath, and your orators say that none of the witnesses who were examined before said committee were sworn by any person having authority to administer an oath; that in each and every instance the oath was administered by the chairman of said committee; that upon the evidence of witnesses sworn, as above stated, and upon the *ex*

177 *parte* affidavits aforesaid, said committee rendered their decision as follows:

To the president and board of directors of the Chicago Board of Trade:

GENTLEMEN: The undersigned, a committee appointed to fix a settlement price for No. 2 spring wheat on the 31st day of July last, beg to report that, after a long and patient hearing of the evidence as it has been presented to the committee by the parties in interest, and "in view of all the facts, and having reference to the duty of the seller to specifically fulfill his contract," do determine the settlement price of No. 2 spring wheat to be one dollar and thirty-five cents per bushel ($1.35) on the 31st day of July, 1882, and on the claim submitted find Messrs. Merrick & Lindman are justly indebted to Messrs. Irwin, Orr & Co. for damages in the sum of four hundred and fifty-six dollars and twenty-five cents ($456.25).

A full report of the testimony taken during the investigation is presented herewith.

Respectfully submitted,

(Signed) E. BUCKINGHAM, *Chairman.*
(Signed) H. H. GOODNOW.
(Signed) H. BAUSHER, JR.
(Signed) PORTUS B. WEARE.
(Signed) FRED. S. JAMES.

Chicago, Sept. 4, 1882.

Your orators say that said decision is unjust and a fraud upon their rights, and that they cannot and will not submit to the
178 same as a basis for the settlement of any of their aforesaid contracts; that the sum of $1.35 per bushel was not the just or true value of number 2 spring wheat on the 31st day of July, 1882; that said sum was a fictitious price, caused by a manipulation of the market for the purpose of extortion, and by the engrossment of the particular variety of wheat above mentioned; that the just and true value of number 2 spring wheat on the last day of July, 1882, did not exceed the sum of $1.15 per bushel, and this fact your orators say was overwhelmingly established by the evidence introduced before said committee.

Your orators further say that section 7, rule 4, of the aforesaid rules provides as follows: "When any member of the association has failed to comply promptly with the terms of any business contract or obligation, and has failed to equitably and satisfactorily adjust and settle the same; or when any member has failed to promptly comply with and fulfill the award of any committee of arbitration or committee of appeals, made in conformity with the rules, regulations, and by-laws of the assocition, he shall, upon admission or proof of such delinquincy, before the board of directors, be by them suspended from all privileges of the association until all of his outstanding obligations to members of the same shall have been adjusted and settled, when he may, upon application, be reinstated."

179 Section 8 of said rule 4 provides:

"When any member of the association shall * * * be guilty of a willful violation of any business contract or obligation, and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regulations, and by-laws of the association, or when any member shall violate any rules, regulations, and by-laws of the association, * * * he shall be censured, suspended, or expelled by the board of directors as they may determine from the nature and gravity of the offense committed."

And your orators further say that members of the board of trade to whom your orators have sold No. 2 spring wheat for July delivery, as aforesaid, claim and insist that, under the rules of said board above set forth, the decision of said committee, as to the value of said wheat on the 31st day of July, 1882, shall be deemed its true value at that date, and shall be accepted and recognized as establishing said value as the equitable basis for the settlement of all their aforesaid contracts with your orators, and that damages shall be assessed against your orators, and that the measure thereof shall be determined by the value established by said committee
180 as aforesaid. Your orators say that said members of the board of trade will, and they threaten that they will, under said rules, immediately present to the board of directors of said board of trade proof of the refusal of your orators to adjust or settle said con-

tracts on the aforesaid basis, and your orators say that upon the presentation of such proof to said board of directors said board threaten that they will and must, under said rules, either expel your orators from said association or suspend your orators from all the privileges thereof; and your orators say that said board, if not restrained, will either suspend or expel them, as aforesaid, to the great pecuniary loss and damage of your orators and to the great damage and injury of your orators in their business relations.

Your orators further say that they are brokers and commission merchants in the business of receiving, buying, and selling grain, provisions, and produce in the city of Chicago; that they receive, buy, and sell principally for and on account of others; that they have been engaged in said business for 6 years last past; that said business has been and now is the principal business from which your orators derived and now derive an income for the support of themselves and their families; that all the business transacted
181 in the city of Chicago of the character above indicated is transacted on the board of trade of said city and cannot be transacted elsewhere in said city; that said board of trade furnishes the chief or principal market for the entire products of the Northwest, and is the only institution of the kind in the city of Chicago; that the privilege of transacting business on said board as a member thereof has a pecuniary value to each of your orators of upwards of $10,000 per annum; that if your orators should be deprived of said privilege they would suffer not only irreparable damage and injury pecuniarily, but they would suffer an irremediable damage and injury in their business relations; that their characters and reputation as business men would be seriously injured throughout the country; that for the damage and injury thus sustained they would have in fact no redress; that the loss to your orators of the money consideration which they might obtain on the market for their membership would be trifling in comparison with the loss and injury which they would suffer by reason of being deprived of the rights and privileges which they have as members in the transaction of of business on said board. In consideration thereof, and forasmuch as your orators are without remedy save in a court of equity, and to the end that the said Board of Trade of the City of
182 Chicago, defendant, may be required to make full and direct answer to this bill of complaint, but not upon oath, the benefit whereof is expressly waived by your orators, and that the appointment of said special committee, their proceedings, report, and decision, may be declared illegal and void; and that the said Board of Trade of the City of Chicago, its officers, agents, and committees, may be restrained and enjoined from accepting, treating, or recognizing the aforesaid decision or findings of said special committee, as to values or otherwise, as of any force, validity, or effect whatever, and from taking any action whatever on said report and decision so far as your orators are or may be concerned, and that your orators may have such further or other relief in the premises as the nature of the case may require and to your honors shall seem meet—

May it please your honors to grant unto your orators the people's

writ of injunction issuing out of and under the seal of this honorable court, to be directed to the Board of Trade of the City of Chicago and to its board of directors, officers, agents, and committees, therein and thereby commanding and strictly enjoining and restraining the said Board of Trade of the City of Chicago, its board of directors, officers, agents, and committees, in manner aforesaid.

183 May it please your honors to grant the people's writ of summons, to be directed to the sheriff of the said county of Cook, commanding that he summon the said Board of Trade of the said City of Chicago to be and appear before the said court on the first day of next October term thereof, to be held at the court-house, in the county of Cook aforesaid, and then and there to answer all and singular the premises, etc.

JOHN E. BURKE,
Solicitor for Complainant.

STATE OF ILLINOIS, } ss:
Cook County, }

George M. Barber, being duly sworn, says he is the complainant named in the foregoing bill of complaint; that he has read said complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

(S'g'd) GEORGE M. BARBER.

Subscribed and sworn to before me this 11th day of September, A. D. 1882.

[N. P. SEAL.] RICHARD W. CLIFFORD,
Notary Public.

Let a writ of injunction be issued in this case in pursuance of the foregoing bill upon the complainant giving a bond in
184 the sum of one thousand dollars, with surety to be approved by the clerk of this court.

JOHN A. JAMESON, *Judge.*

Filed Sep. 11, 1882.

JNO. J. HEALY, *Clerk.*

Injunction Writ.

STATE OF ILLINOIS, } ss:
Cook County, }

To the people of the State of Illinois, to the Board of Trade of the City of Chicago, and to your attorneys, solicitors, agents, and servants, and to each and every of them, Greeting:

Whereas it hath been represented by the honorable John A. Jameson, one of the judges of the superior court of Cook county, in the State aforesaid, on the part of George M. Barber, complainant, in his certain bill of complaint exhibited before said judge and filed in said court against you, the said board of trade, amongst other things,

that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience, and the said judge having under his hand endorsed upon said bill an order that a writ of injunction issue out of said court, according to the prayer of said bill, we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do
185 strictly command you, the said board of trade, and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from accepting, treating, recognizing or acting upon the report, decision, and findings of the special committee appointed for the purpose of fixing a settling price for number two spring wheat for July (1882) delivery, so far as said complainant is concerned, until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the sheriff of said county to execute and return in due form of law.

Witness John J. Healy, clerk of said court, and the seal thereof, at Chicago aforesaid, this 11 day of September, A. D. 1882.

[SEAL.] JNO. J. HEALY, *Clerk.*

Served this writ on the within-named The Board of Trade of the City of Chicago by delivering copy of this writ to A. H. Gwin, assistant secretary of said board of trade, this 11th day of September, 1882, the president of said board not found in my county.

O. L. MANN, *Sheriff,*
By J. H. BURKE, *Deputy.*

Filed Oct. 2, 1882.

JNO. J. HEALY, *Clerk.*

Placita.

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

186 Pleas before the Honorable George Gardner, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the second day, of October, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

Present: The Honorable George Gardner, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Orrin L. Mann, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, the same being one of the days of the October term of

the superior court of Cook county, the following, among other, proceedings were had in said court and entered of record, to wit:

Decree.

GEORGE M. BARBER
vs.
BOARD OF TRADE OF THE CITY OF CHICAGO. } 83890.

This cause coming on to be heard upon the motion of the defendant, The Board of Trade of the City of Chicago, herein to
187 dissolve the injunction hereinbefore granted for want of equity on the face of the bill, and arguments of counsel having been heard, and the court, being now fully advised in the premises, decides that said motion should be sustained; whereupon the complainant, electing to stand by their said bill of complaint, it is ordered, adjudged, and decreed that the injunction heretofore granted be dissolved, and that said bill of complaint be, and is hereby, dismissed for want of equity, and that said defendant recover its costs herein, to be taxed; and suggestion of damages upon the injunction bond herein being made, the court, having heard the parties, assessed the damages at fifty ($50) dollars, the complainant taking no exception to the finding, so far as concerns the amount, and judgment is hereby entered therefor; for which said defendant may have execution after the expiration of ten days herefrom, unless the appeal herein prayed and allowed be in the meantime perfected; to all which the complainant now and here excepts, and prays an appeal therefrom to the appellate court within and for the first district of Illinois; which appeal is granted.

But it is ordered, upon the stipulation of the parties, that said appeal need not be prosecuted, but that this cause shall abide the final result of the case of Abner M. Wright *et al. vs.* The Board
188 of Trade of the City of Chicago (No. 83823), in the appellate court or in the supreme court, and in case of the reversal of the decree in said case, then this decree shall be set aside on motion of the complainant.

And the injunction herein is ordered to be, and the same is hereby, continued in force; and if the decree in said cause shall be finally affirmed, then this order and decree is to be final, except that part of the order containing the injunction in force, which shall be vacated on motion of the defendant.

And on April 16th, A. D. 1883, the same being one of the days of the April term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

Bill.

GEORGE M. BARBER
vs.
THE BOARD OF TRADE OF THE CITY OF CHICAGO. } 83890.

This day comes the defendant, by its solicitors, and submits herein its motion to vacate the order to continue the injunction in this

cause, which motion, after argument of counsel, is sustained, and it is ordered that said order containing the said injunction be, and the same is hereby, vacated.

189 STATE OF ILLINOIS, } ss:
Cook of County, }

I, John J. Healy, clerk of the superior court of Cook county in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain bill of complaint and injunction writ now on file in my office, and a certain decree made and entered of record in said court in a certain cause lately pending in said court, on the chancery side thereof, wherein George M. Barber was complainant and The Board Trade — defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 26th day of January, A. D. 1884.

[SEAL.] JNO. J. HEALY, *Clerk.*

190 Q. This bill states that you had sold to divers parties on the board large quantities of No. 2 spring wheat, amounting in the aggregate to 50,000 bushels, prices ranging from $1.23 to $1.28⅞ per bushel, said wheat to be delivered at the pleasure of your orators *at* during the month of July, 1882. Will you please explain if any error occurred in the statement of the amount or price, and how it occurred, if at all?

A. That 50,000 bushels, as stated here, should have been 100,000; that when Mr. Burke handed this to me, as quick as my eye struck the 50,000, I told him that was wrong; it was 100,000, and he said that he could fix that; that he would change that, and I supposed it was done and I signed it.

Q. This copy is on a printed blank?

A. It is.

Q. You may state whether, when you went to Mr. Burke's office, you found the bill prepared, or how it was.

A. I know when I first went in I asked him if Mr. White had been in to make arrangements with him for attending to an injunction suit for me, and he said he had, and I asked him if the papers were ready. Well, he says, about so, or it wouldn't take but a minute or something of that kind, and that he was busy at the

191 time, and he handed me a lot of blanks similar to this to look over, and in a few minutes he handed me—in the meantime he asked me—in a very short time he asked me about another question that I remember about distinctly, about what my privileges then on the board of trade were worth to me; I do not know whether that is just the form, whether it comes in here; I don't know how that was—if they were worth $10,000.00 a year. I told him they were, and about the time that I had been on the board; I know he asked me that how long I had been there; I told him as much as six years. And there is a slight discrepancy as to the prices at which this wheat was sold; this states it from a $1.23 to $1.28⅞, when the facts are this, that I defaulted on the lowest *was* 22⅞, I

think, and 28⅞, a difference of ⅜ of a cent on the lowest five and an eight- on the other. Now, to the best of my recollection, that question was spoken about; he asked me the price and I told him, though that I did not know that this was exactly, but it was very near it, but I had not my books with me, but I knew that was very near it, and that he either said some one had been in and that he had got that and thought it was all right; that is the only explanation I can make of it; that 50,000 I certainly supposed was changed, the other, if it was not that it was so very near it as to be immaterial, and I hadn't my books with me and could not state to an eight- of a cent.

192

Q. After you learned that the decision of the supreme court had been adverse to you in that case what communication did you have with Mr. White on that subject? You have already spoken of a conversation had on the 31st of March *think*, but did you have any communication in writing or make any?

A. Well, sir, I may have had; I don't recall any. I know at the time just previous to my paying this money—I know my clerk wrote some letters for me, and I may have written some myself, but I do not recollect them.

Q. You may notice, if you please, this letter and telegram, and see whether they refresh your recollection (handing papers to witness).

A. Yes, sir. I did not communicate directly with Mr. White in regard to this.

Q. How did you?

A. I notified Mr. Maltman. Shall I read it?

Q. This is a letter from John E. Burke, dated Chicago, April 11, 1883, to Mr. George M. Barber, and also a telegram from J. B. White to A. S. Maltman, dated April 13, 1883. After receiving this letter from Mr. Burke you communicated with Mr. Maltman as to the result of the case, as I understand it?

193

A. I did. I asked Mr. Maltman if he knew whither Mr. Burke wished any further appearance, as that letter would indicate.

Q. Whether Mr. White?

A. Whether Mr. White.

Q. Then you may state whether this telegram from Mr. White was communicated to you under date April 13, 1883.

A. It was, sir; handed to me by Mr. Maltman.

Counsel for defendant here reads letter dated Chicago, April 11, 1883, addressed to George M. Barber, and signed John E. Burke, which is as follows:

"CHICAGO, *April* 11, 1883.

"Geo. M. Barber, Esq.

"DEAR SIR: I have been notified that on Friday morning next a motion will be made before Judge Gardner to vacate the orders by which the injunctions in the suits against the board of trade were continued. On behalf of several of the parties a petition will be filed for a rehearing of the Wright case in the supreme court. On

Friday morning I will appear for those parties and oppose
194 the motion. Please let me know at once whether you intend to unite with those who are in favor of making the application for a rehearing.

"Yours truly, JOHN E. BURKE."

Also reads telegram dated April 13, 1883, at Fort Wayne, Indiana, addressed "To A. S. Maltman, 116 South Water street: Telegram received; further appearance not necessary. J. B. White."

Q. Mr. Barber, was it after the decision of the supreme court in the case of Abner M. Wright that you had the conversation with Mr. White on the 31st of March, 1882?

A. Yes, sir.

Q. Who paid the damages which were assessed in this injunction case?

A. As I understand it, Mr. Maltman paid them for Mr. White.

Q. You may state whether any of the parties with whom you had these trades open on the 31st day of July, 1882, for No. 2 winter wheat were persons named here as being connected with the corner, Irwin Orr & Co.?

A. Not directly; no, sir.

Q. C. J. Kershaw?

A. Not directly; no, sir. Those parties named there were recognized—yes, they were recognized as corner men—the talk.

Q. But I asked you about the parties with whom you had your dealings.

195 A. Well, they were not directly.

Q. Under what assumption, if any, caused you to assume that there was any indirect connection between them?

A. Indirectly, because if I had it sold to one commission man, either to the corner or parties running the corner, if there was any, or to a second party, and they to them indirectly if run right straight to these parties.

Q. Raising the question in equity whether the price should be as great as the committee fixed it as you understood?

A. Yes, sir.

Q. Did you yourself furnish Mr. White, or to Mr. Burke perhaps I ought to say, the information that is given in this bill other than you have already said as to how long you had been on the board of trade and as to the value, about, of your membership and the number of bushels of wheat you had sold?

A. To the best of my knowledge I did not; that was all.

Q. I would like to ask you about the tender of the red winter wheat on the 31st of July, 1882, if you will please tell what you did in respect to the tender of red winter wheat.

A. Well, coming right to that point without any of the
196 preliminaries, I tendered the wheat to them and the refused it, the majority of the parties.

Q. You can state whether any communication was had with Mr. White on the subject of making the tender?

A. I saw Mr. White in the office of Mr. Maltman, as stated by him in his evidence, on the morning of the last day of July, and there was more or less talk there as to what to do, whether he would buy it in or default, and finally he said he would see me later, just as he said; and along in the neighborhood, perhaps, 10 o'clock I learned that a number of the best firms on the board were making it or going to make tenders of the wheat, thinking it might help them. I tried to find Mr. White, and supposed he was up there on the board somewhere; looked all around for him and could not see him, as I had very little time to do it in—it must be done before 11 o'clock—so I went out. I thought I would take the responsibility of doing it myself; thinking it would meet his approval, — procured 10,000 bushels of wheat and made out bills and started on around to the parties that it had — sold to and tendered them the wheat; they refused it, and as quick as I had got through with that went back on the board and saw Mr. White; he was highly pleased with it,
197 with what I had done.

Q. He says you told him that you borrowed of Hutch., or Mr. Hutchinson, 10,000 bushels—receipts for 10,000 bushels—of red winter wheat. How did you do with 10,000 bushels?

A. Well, sir, I expected they would refuse it, and 10,000 would do as well as more, but if they had accepted it I should have procured more. His statement was not—he made a little mistake in saying that I got the wheat from Hutchinson; the fact was I procured it from Rumset Brothers, but I should say it was immaterial. I talked with Hutchison about it, and so stated to Mr. White that I went to see Mr. Hutchison.

Q. You were enabled to make the tender of that much, and it ordinarily covered all the contracts you had with any particular party?

A. Yes, sir.

Q. With one exception, I believe?

A. Yes, sir.

Q. It was refused by all?

A. Yes, sir; all but one; and they waived the tender; they said they would wait.

Q. Will you please state whether Mr. White suggested to you to make any other defense as against the award of the committee, or in any proceedings against you before the board of
198 trade than by this bill in chancery?

A. Never, sir.

Q. At the time he made a demand *you* you on the 2nd of April, 1883, under the notice which has been introduced in evidence. You can state whether the money which had come into — hands from him was really under your control at that time, or, if not, how far it was without your control.

A. Well, sir, it was under my control, with the exception of $6,700.00, which was up in margins; yes, sir, it was up in margins at that time that day. I could not control that.

Q. Why couldn't you control that?

A. Because it was put up under the rules of the board, which re-

quired that the certificates issued by the bank, which required that they should be endorsed—the margin stated that it was on contract between——

Objected to, as the certificate speaks for itself.

Mr. DENT: That is a matter which is governed by the rules, and I will later offer and read the rule on the subject.

Cross-examination by Mr. STILES:

Q. Mr. Barber, you spoke of a talk you had with Mr. White about October 2d.

A. October 2nd?

199 Q. I think so; when this bill was presented to him—the bill of October 11th, 1882.

A. October 30th.

Q. October 30th. Are you sure that Mr. White was in the city at that time? Wasn't the talk that you had a talk with Maltman.man?

A. No, sir; Mr. White himself, on the board of trade.

Q. He wanted his balance?

A. Balance or what was coming to him; that was the way.

Q. Did you agree at the time what was coming to him?

A. No, sir.

Q. When did you agree.

A. Immediately I figured up after I went off 'change at 1 o'clock; got him a draft and made the statement.

Q. Did you hand the draft to Mr. White?

A. I am very sure I handed it to Mr. White.

Q. Now, didn't you hand it to Maltman, and didn't Maltman send it to White at Fort Wayne?

A. I don't think so; I am very sure that I handed it to Mr. White himself.

Q. Have you got that card that you used yesterday?

A. I think so, sir. Mr. Stiles, I don't seem to have it; perhaps I may send for it.

Q. Have you got one like one of that kind of cards?

200 A. Yes, sir (producing cards); these all have other matters or nothing to do with the trades. I will send and have that card brought.

Q. Before I come to that let me show your letter from Mr. Maltman to White, dated October 30th, which reads as follows: "I enclose Barber's draft on New York; also his statement in regard to July wheat deal." Don't that refresh your recollection, now, that you gave the draft to Maltman and Maltman sent it?

A. I should presume by that that I was mistaken about handing it to Mr. White; presume so.

Q. Now, are you mistaken about having agreed or had any talk with White in person about the balance?

A. No, sir; that I could not be mistaken in.

Q. That you are not mistaken in?

A. No, sir.

Q. You are mistaken in part, but not in whole?

A. No, sir; I don't think we agreed on the amount right there. He said, "You figure it up and get the draft for the balance."

Q. See if I understand the manner in which these contracts were made by which you sold 100,000 bushels of wheat for White—July wheat. If I understand it rightly, over on the board of trade is what they call a wheat pit or wheat ring—something of that sort, isn't there?

201 A. A wheat pit.

Q. Around some place which the wheat dealers gather?

A. Yes, sir.

Q. And make their trades?

A. Yes, sir.

Q. And in this instance, perhaps, you went in and offered 5,000 July wheat, $1.24, if you please, and somebody says, "Will take it." Thereupon you took out your pencil, and you put down "5 M July, J. B. W., $1.24?"

A. No, sir; I should put down the name of the party that said he would take it, and then "J. B. W.," simply the initials, to designate who the customer was.

Q. To show on whose account you were making the trade?

A. Yes, sir.

Q. Or it might be that somebody in the wheat ring sung out, "I will give $1.24, 5,000 July wheat," and you said, "I will sell?"

A. That is it.

Q. That is the way they did?

A. Yes, sir.

Q. And that is all there would be said about it—all there was said at that time?

202 A. As a general thing, we try very often, if he is any distance off, when the man sings out as you say, to get up to him and repeat it.

Q. To find out who he is?

A. No, sir; we know who it is, but, for fear that there might be a mistake, made these right off.

Q. But your talk would be only for the purpose of verifying the sale?

A. That is all.

Q. Not any talk about conditions at all?

A. No, sir.

Q. Now, then, after change is over your clerk would take your card around to the party, compare with his, and if he finds it all right he will mark here on the margin?

A. Yes, sir.

Q. I saw one here on the card you had yesterday?

A. Yes, sir.

Q. Now, that contract, according to the usages over there, means this, don't it: 5,000 bushels of wheat sold by you for the account of J. B. White, he to deliver any time in the month of July or settle, one or the other?

A. It means that I have sold to that party, so far as you say; it means over there; the customer knows.

Q. Well, I mean between you two dealers?

A. Yes, sir; the customer would get no favor; you say it means with J. B. White?

203 Q. Well, we will leave him out; no matter who it is.

A. It means that I have sold him 5,000 bushels of wheat at the price stated to be delivered at any day at my option in the month of July.

Q. Or settled?

A. Well, it means that I sold it then—that I must deliver.

Q. It means that it is to be delivered or settled for, don't it?

A. It don't mean any such thing.

Q. It does not?

A. No, sir.

Q. Then it was delivered, was it, or tender was made?

A. A tender was made on this, but a tender of a different kind of wheat.

Q. The fact is, isn't it, Mr. Barber, that — a large proportion nearly of the sales so made there is no tender on either side or offer to deliver—that is the fact, isn't it?

A. The facts are that a large proportion of them, after the trades are made, *that they* get together and offset one trade against another; yes, sir.

Q. Well, putting it in my way, am I not right about it that nearly all of the deals are settled by the payment of money, one side or the other?

A. No, sir; not nearly all.

Q. Well, what proportion?

204 A. Oh, I think it is very hard to tell. I should say a large majority; I should think. I receive a good deal of grain. I have received a great deal of grain on contracts—a great deal.

Q. How much did you receive in this 100,000 bushels you sold?

A. I cannot tell. This 10-,000—it was all sold; I could not receive it; it was sold short; never bought it.

Q. Whenever you bought any for White did you receive any?

A. I can't say whether I did or not. I should say that a very large proportion of it was, as I explained yesterday—was settled.

Q. Do you call to mind any instance where you bought for Mr. White that you received any commodity?

A. No, sir; I cannot recall any trade. I have no doubt at all in all his trading that I did a great deal, but I cannot recall any particular instance.

Q. The practice almost universally is or was with you, wasn't it, that when the time came for delivery, or for the receipt, as the case might be, depending on whether you had sold or bought, you went to the party to get what was due to you or he came to you to get what was due from you to him?

A. Not at all.

Q. Not at all?

A. No, sir.

205 Q. How was it?

A. When the time for delivering — I was prepared to receive the grain and pay for it from the party that I had bought it of.

Q. Well, suppose White had sold 100,000 bushels or bought 100,000 bushels of wheat and the time came for delivering you were prepared to receive the 100,000 bushels of wheat?

A. I was prepared to pay——

Q. No; please answer the question first and then explain afterwards.

A. Well?

Q. In such case you would be prepared to receive the wheat, would you—100,000 bushels?

A. Well, I should, if I had it sold for Mr. White to other parties; receive it as it came in.

Q. No, put the case just as I put it. Supposing White had bought 100,000 bushels July wheat instead of having sold 100,000 bushels, and the time came for delivering, you would be prepared to receive that 100,000 bushels of wheat, wouldn't you?

A. Well, it is hard to answer that question exactly. I don't think my bank account would allow me to pay for 100,000 bushels of wheat, Mr. Stiles.

Q. Now, you are getting at the reasons.

A. At the same time I can pay for more wheat than I have money in the bank, and that my checks would be certified
206 instantly if taken in now to what extent — they have always told me that they would certify them for any amount that came in.

Q. That is, you would take warehouse receipts and put them into the bank?

A. No, sir.

Q. Well, I don't see that you have answered my question, Mr. Barber.

A. That is to say, I say that I firmly believe that my checks for 100,000 bushels of wheat would be paid at the bank.

Q. Then do you say that you would have been prepared to have received 100,000 bushels?

A. Well, if they say so I firmly believe that.

Q. Had you ever taken that many in 100,000 bushels?

A. I first told you that I had not, but they promise- this a great many times—that where I gave checks for grain that — would take care of those checks for me, if they were given in excess of my account; I will state that now—to what extent I don't know. If it was a $100,000.00 or a $1,000,000.00, a million dollars, they would not do it.

Q. There was no expectation that any grain would be delivered on these transactions, was there, Mr. Barber?

A. There wasn't a certainty that it would be delivered,
207 unless after the trades were made I made offsets.

Q. There was no expectation that it would be, was there?

A. Just as I say there was; unless I got them out of the way by offsetting one trade against the other, there was a certainty.

Q. Unless—now, take that instance into consideration; was there any expectancy that the grain would be delivered either side?

A. Certainly; I always expect to get more or less of it; I do not expect it will all be delivered; I expect I can offset trades with a good part of it.

Q. Did you ever call on White for money enough to pay for the grain in case it should be delivered to him?

A. I am very sure that on the 30th day of November, at the time he speaks of when he testifies that he was long 100,000 bushels of December corn, which, I presume, he is correct about, that he was up here the 30th day of November, and I told him that corn must be settled now; I told him that he must either sell that corn or give me money to pay for it the next day. If he sold it I would have a place if it came into me to deliver it; that I could not pay for it and hold it for him.

208 Q. Well, now, during this perilous situation in which wheat was placed when you were approaching July, did you say anything to him to the effect that you wanted him to furnish you with money enough to pay for that grain?

A. No, sir; I did not.

Q. To buy the grain and deliver it?

A. That is not customary.

Q. That is what I supposed; that is what I have been trying to ger at. It is not expected that you would deliver the grain, is it?

A. Yes, sir.

Q. It was expected in this instance that you would deliver 100,000 bushels of grain?

A. In this, when the trades were made I expected that it would be delivered; that he would buy it here on the market, the largest grain market in the world.

Q. What do you call delivering grain?

A. I mean either take the warehouse receipts for the grain and deliver those; not that I would take the grain in a wagon, but that I would take warehouse receipts representing that grain in store and deliver them, or, under the rule, we can deliver it upstairs in a little different way, but it amounts to the same thing.

Q. What is the different way that amounts to the same thing?

A. A party that has 5,000 grain to deliver makes up on a paper the statement of the identical receipts that he has ready, the

209 number of bushels in each receipt, the aggregate of those, and states that he just has made it to a certain party; that he is the party sold to, and they go upstairs at half-past one in the board of trade room, and this party that makes it up delivers it to the party he has sold to, stating that he is ready to deliver 5,000 bushels.

Q. Delivers the warehouse receipts or figures?

A. He states that he has the receipts in his office ready for delivery and, by the way, you would like to see one?

Q. I don't care about it. Was this practice in vogue at the time these transactions were had?

A. This afternoon department? I cannot say whether it was or not.

Q. Don't you know that is a recent practice that has come into use?

A. Well, I know comparatively whether a year and a half ago or more.

Q. Since this corner, wasn't it?

A. I can't say.

Q. Speaking about this corner over there at the time or during the last of July, 1882, it was manifest there was a corner on the market, wasn't it?

A. Well, a great many thought it was. I was one that thought there was.

Q. Wasn't it an opinion held throughout generally by the members of the board?

210 A. So far as I know, Mr. Stiles, it was the opinion that the market was cornered.

Q. Sort of conceded all around?

A. Well, I think so; I thought so.

Q. If I understood you rightly in answer to Mr. Dent's questions, these parties to whom you sold this 100,000 wheat for White, a dozen in all, were buying in the interest of Armour and Kershaw?

A. No, sir; they had it sold indirectly. It indirectly went to Armour & Kershaw.

Q. That is what you mean. I don't care how many hands it went through before it got there; there is where it landed finally?

A. Landed finally.

Q. They were buying for the corner?

A. No, sir; they were not buying for the purpose —; they were buying for their customers and selling to another man for his customers.

Q. That is what it was—passing it through several hands until it got to Armour and Kershaw?

A. Probabilities are, as they were long on the market, that they received it finally; the contract finally went there.

Q. Did you know that at the time?

A. Well, I know it to be a general fact.

Q. That is, did you so understand it?

A. Not at the times I made these trades. I did not know as it was as early as that. These trades were made for him in

211 May. I did not know at that time. It was later than that.

Q. Before the corner manifested itself.

A. Yes, sir; after these trades were made.

THOMAS W. BURNS, a witness for the defendant, having been duly sworn, was examined in chief by Mr. DENT, and testified as follows:

Q. Of what firm are you, Mr. Burns?

A. Schwarbacker & Co. now, sir.

Q. Of what firm were you in 1882?

A. I was connected with the firm of Ulrich, Busch & Co.

Q. In what business?

A. Grain and commission.

Q. You will please state whether your firm at that — had any contract or contracts with Mr. George M. Barber for the purchase from him of No. 2 spring wheat; and, if so, what was the contract?

Mr. STILES: I do not think that is the proper question. It seems to me the question should be, What was said at the time that the purchase was made?

The COURT: He may answer that question, and then you can find out.

A. On May 17, 1882, bought from George M. Barber 5 July wheat at 1.24⅜.

Mr. DENT: What kind of wheat was that?

A. No. 2 spring wheat, or regular wheat, as we call it.

Q. Where was that contract made?

212 A. I don't know, sir; in all probability it was made in the regular hours, upstairs; I don't just remember the time.

Q. You may state the nature of the contract, if there was any — particular, with reference to it.

A. Nothing, sir; the contract was made in the regular way as, we always make them; go in there and buy wheat, or he may offer to sell it and I take it of him. I might have bid a certain price and may have taken it of him.

Q. When was the grain to be delivered?

A. During the month of July.

Q. At whose option?

A. At the seller's option.

Q. You may state whether there was any secret understanding about it that it was not to be executed.

A. No, sir.

Q. Or that it was to be settled, or anything of the kind?

A. We don't do business that way, sir.

Q. Was there anything other than the contract to regulate it—determine whether it should be delivered or not?

A. Nothing, sir, that I know of. In the regular way, regular course of business—a regular trade.

Q. And it would be subject to the rules of trade there?

A. Certainly; yes, sir.

Q. Rules and regulations?

A. Yes, sir.

213 Q. They regulate the manner of delivery among others particulars?

A. There are rules and regulations stating how trades shall be, what is regular on a contract made. We always live up to them.

Cross-examination by Mr. STILES:

Q. What did you mean by your answer, "We don't do business that way?"

A. Well, we do business, sir, in the regular course of business, as all merchants do. We buy or sell at the market price, and we check up our trades and have our contract signed ready to pay for the property when it is delivered.

Q. That is, you do business as other merchants do?
A. Yes, sir.
Q. What other merchants?
A. All first-class commission houses.
Q. Does that include anybody except members of the board of trade, when you say other merchants?
A. Well, I speak of regular commission merchants who are members of the board of trade.
Q. That is, your firm does business as the other members of the board of trade do business; is that it?
A. Well, I do not know about that. We have our own way.
214 Q. When you say you do business as other merchants do, you mean by that as other merchants on the board?
A. Yes, sir.
The COURT: Mr. Burns, I understood you to say that this transaction was made on the board of trade with your firm in the usual and regular way?
A. Yes, sir.
Mr. STILES: Let me ask you, did you make this purchase yourself?
A. Yes, sir.
Q. In person?
A. Well, I am pretty sure of it, because I made all the trades for the house at the time.
Q. You have no distinct recollection about this?
A. Well, I am quite positive we did not employ any brokers at all.
Q. But I say you have no distinct recollection about this particular trade?
A. No, sir.
Q. But you think you must have made it, as you were making purchases for the house?
A. Yes, sir; because we have it as matter of record on our books, that it was made.
Q. You get this information from your books, do you not, and not from your recollection?
A. Yes, sir; from the books the time that we settled up and margined up, and everything of that sort.
Mr. DENT: Have you a memorandum as to margining up
215 and when it was settled?
A. Yes, sir; this wheat was settled under the rules of the board of trade April 24, at $1.35; Mr. Barber paid us $531.25. At that time he had $1,350.00 margins up and it was released to him on April 24.
Mr. STILES. Your remark was that this was settled in accordance with the rules of the board of trade. I was going to see whether you were correct about it.
A. Well, the decision of the committee appointed to fix the price.
Q. Yes; I know the rules of the board of trade provides this committee shall determine the just and true value of the property de-

faulted on, and so forth. You understand that the committee did determine the just and true value, didn't you?

A. I have no reason to think otherwise.

Q. Perhaps you will when I read you the report of the committee. "The undersigned committee, appointed to fix a settlement price for No. — spring wheat on the 31st day of July last, etc., beg to report that after long and patient hearing of the evidence taken, we do determine the settlement price of No. 2 spring wheat to be $1.35 per bushel."

A. Yes, sir; on that basis we settled.

216 ABEL H. BLISS, having been duly sworn as a witness on behalf of the defendant, was examined in chief by Mr. DENT, and testified as follows:

Q. In what business were you in the spring and summer of 1882?

A. General produce and grain and commission.

Q. You were a member of the board of trade, were you?

A. I was.

Q. Did you have any dealings with Mr. George M. Barber?

A. I did, in July wheat.

Q. In July wheat—No. 2 spring wheat?

A. Yes, sir.

Q. What were those dealings?

A. Well, I had 10,000 wheat I bought of him that I never got; I remember one 5 was about $1.23, I think, and ⅜, and the other was $1.25 and something.

Q. When were the contracts made with him?

A. I think it was made in May.

Q. Have you any memorandum to guide you?

A. I have not here; I picked out my cards and I mislaid them somewhere; I carried it in my pocket for two or three days expecting to come here—my original card.

Mr. STILES: We are prepared to admit that the other sales were made as this last gentleman on the stand testified—that is, if
217 Mr. Dent intends to bring each one of these twelve we will save him that trouble.

Mr. DENT (handing witness paper): I am giving you these papers for the purpose of enabling you to refresh your memory. If they will refresh your memory as to prices, you may look at these two bills and they may be all you will need to look at.

A. Well, this says it was bought for $1.23½ and $1.25⅜.

Q. Where were those trades made?

A. On the board of trade.

Q. What was the nature of the contracts?

A. The nature of the contracts was that he sold me this wheat to be delivered during the month of July.

Q. At whose option?

A. At his option; delivered any time during the month of July.

Q. You may state whether there was any other understanding or agreement about the matter or whether the contract was absolute, except only that he had the option as to the time during the month?

A. Before the contracts came due I went to Mr. Barber and told him I was anxious to get the wheat; that I wanted it to deliver; I wanted to go away and he said he would let me have it just as quick as he got it.

Q. You can state whether there was any agreement between
218 you and Mr. Barber at any time that that wheat should not be delivered to you?

A. No, sir.

Q. That there was to be any settlement to it?

A. He could not have made such agreement. I wanted the wheat.

Q. And you expected it?

A. I certainly did expect it. I never knew of him defaulting before, and I hadn't the least idea he would be defaulted. I expected to get it.

Cross-examination by Mr. STILES:

Q. What times was it you wanted the wheat?

A. I wanted the wheat as quick as I could get it after the first day of July.

Q. Did you expect to get it before the seller chose to deliver?

A. No, but I didn't know but he might deliver it to me, the first he got. I didn't know but he might deliver it to me as a favor, the first he got.

Q. You wanted the wheat itself.

A. That is what I wanted.

Q. What did you want to do with it?

A. I wanted to deliver it to the party that I had sold it to.

Q. What do you mean by wanting the wheat?

A. I wanted him to deliver me that wheat, the receipts of that wheat in the warehouse, so that I could get the wheat if I
219 wanted it, or where the party that I delivered these receipts to could get the wheat.

Q. When you complained to the board of trade why didn't you complain that he did not deliver you the wheat?

A. The complaint is virtually that complaint.

Q. That is the way you understand it?

A. Yes, sir. It don't specify the contract.

Q. The way it reads is this: "The president and directors of the Board of Trade of Chicago: We respectfully beg to represent that George M. Barber is indebted to us to the amount of $1,043.50, the same being difference due to us on wheat sold to us for delivery in July, 1882; and, payment having been refused, we ask that said George M. Barber be disciplined under the rules of the board."

A. Yes, sir; that is right.

Q. Nothing said about the demand for wheat there, is there?

A. It was way past the time that the wheat was due. You did not demand it then.

Q. You went to Barber at the proper time and asked him for the difference, didn't you?

A. After the decision of the board and the supreme court decided

that the value of the wheat was $1.35 and the time of delivery had past, then we had to pay to those that we had it sold to for $1.35, and then we wanted money, the loss that we sustained by
220 not getting it.

Q. What made you want the wheat the fore part of July?

A. Well, I wanted to go to Colorado, and I wanted to get the wheat that was on my books for July off, where I had it bought and had it sold.

Q. That is, you wanted the contract disposed of?

A. I wanted to clear up my books and get away honestly.

Q. This is what you wanted, isn't it, Mr. Bliss—you wanted the deal settled?

A. Well, that is the way I wanted it settled; yes, sir.

Q. You wanted the deal settled so that you could go away and not have it on your mind?

A. I did not want any trouble with it after I went away.

Q. How much wheat have you ever received of Mr. Barber?

A. Oh, I have received a good deal; I don't know.

Q. Wheat?

A. Oh, I don't know; I have received—more or less received—everything from him when he traded on the board.

Q. How much wheat have you received from Mr. Barber?

A. I could not tell.

Q. I mean by that how much wheat?

A. Cash wheat, cash property?

221 Q. Not cash wheat—no, sir; but wheat as represented by warehouse receipts?

A. Yes, that is cash wheat.

Q. Delivered by him into your hands?

A. Oh, received it of him, more or less, from time to time.

Q. How much more and how much less?

A. I could not tell; I don't know any way to get at it.

Q. Do you recollect any transaction with him that you can call to mind?

A. I think we have received wheat from him.

Q. Certain about it?

A. I am pretty certain.

Q. What you wanted in this deal was the difference, wasn't it, Mr. Bliss, or didn't you care anything about that?

A. I think the other fellow wanted the difference.

Q. Who was the other fellow?

A. If there was any difference; well we had it sold to Irwin Orr, and they had it sold to U. Busch.

Q. Did the other fellow tell you to go and try to get this wheat?

A. No, sir; I went on my own account; I had a good deal of margins out; I didn't know how high the value of this stuff would be.

Q. You would have preferred much to have taken the difference rather than to take the wheat?

A. No, sir, I would not.

222 Q. Wheat is much more valuable in your hands than money, is it?

A. The wheat brought money; that is what I sold it for whenever I delivered it.

Q. But — had rather take the wheat and go and get the money on it than you would to take the money first?

A. I don't understand you.

Q. You were very anxious for the wheat?

A. Yes, sir; because I wanted to fill my contract.

Q. Because you wanted to take that wheat and use it?

A. Yes, sir.

Q. Well, couldn't you use the money it represented?

A. At that time I could not; no. I didn't know how to use money then.

Q. I suppose money was useful?

A. Money is useful, but I didn't see how I could have used money in the place of that wheat at that time.

Q. When you bought this wheat somebody said they would sell?

A. I might have said I would buy.

Q. One way or the other?

A. Yes, sir.

Q. And that was all there was said about it at the time?

A. Oh, usually checked it up.

223 Q. Your practice, Mr. Bliss, is in such cases as that when the end of the month comes to go around and present your bill for the difference, isn't it?

A. No, sir

Q. What is your practice?

A. At the end of the month the practice is that a man fulfills his contract.

Q. Oh, I understand that, but what is your practice?

A. That is my practice.

Q. To fulfill your contract?

A. Yes, sir.

Q. How do you do it—always go and get the wheat?

A. They generally bring it to me; I never went after it; it is their business to do that.

Q. They generally bring you the difference, don't they?

A. No.

Q. Isn't that the rule?

A. No.

Q. That is the exception, is it?

A. I never knew it to be done except where they defaulted.

Q. Then most of the transactions on the board in wheat are accompanied by an actual delivery of the wheat, are they?

A. Oh, no; that is a different thing.

Q. Well, how are they.

A. There are some there that are settled.

Q. Some small amount, I suppose?

A. Well, not a small amount.

Q. Occasionally a deal is settled without actually using the wheat?

A. Not so sma ll as that; no, sir.

224 ALEXANDER S. MALTMAN, having been duly sworn as a witness on behalf of the defendant-, was examined in chief by Mr. DENT, and testified as follows :

Q. What is your business, Mr. Maltman?

A. I am connected with the firm of A. S. Maltman & Co.

Q. In what business?

A. They are in the commission business.

Q. Have you represented Mr. James B. White in his business at any time; and, if so, when did you represent him?

A. Well, sir, my recollection is that in 1872 I commenced to purchase goods for Mr. White in Chicago and continued until about 1874, about two years, and then there was a break of two years when his brother bought in the market, and I think I commenced again in 1876 and continued until last September, 1883.

Q. You can state whether you represented him in his business matters with Mr. George M. Barber and when you commenced representing him in those matters.

A. Well, in 1879, October 18th, I think, was the first business that I did for Mr. White through Mr. Barber.

Q. What was that business?

A. It was buying some December corn.

Q. You will state what orders or directions you conveyed for Mr. White to Mr. Barber—that is, you may state the conversation.

225 A. Well, I don't know but I ought to go back; there was one time I got a telegram from Mr. White inquiring the price of 100,000 bushels of wheat; it was the time of the war of Turkey and Russia. I telegraphed to Mr. White.

The COURT: I think you better just confine yourself to the investigation of this last series of dealings.

The WITNESS: I was going to explain, your honor, how Mr. White sent the telegram to me and the conversation afterwards. He said, "You could do that business," and I told him that I couldn't; that I wasn't a member of the board of trade, but that I could get it done.

Mr. DENT: Mr. Maltman, you will please state at the beginning of the transactions with Mr. Barber how they occurred and what authority Mr. White gave you or what directions he gave you to be communicated to Mr. Barber in regard to Mr. Barber dealing for him on the board of trade.

A. Well, I selected Mr. Barber without Mr. White's knowledge, I think, on the first trades, but I immediately wrote to Mr. White. I kept it no secret at all who was doing business on the board of trade, and I think, without exception, every account of sales that Mr. Barber gave me went directly to Mr. White in Mr. Barber's

226 own handwriting; so that, although Mr. White may not have known on the first trade who did the business, he immediately knew afterwards.

Q. What instructions did you give Mr. Barber? What authority did Mr. White give you to instruct Mr. Barber in regard to dealings?

A. At first Mr. White would telegraph for me to buy or sell. I would immediately go to the board of trade and give Mr. Barber the telegram, and he would execute the order and report to me at first, and I told him at times to telegraph to directly to Mr. White the purchase or the sale.

Q. You may state whether Mr. Barber followed your instructions or directions, or now far you saw that he did follow them.

A. I think he followed them to the letter.

Q. How did the business run? Was it continuous from the time it first began, or did it sometimes cease for awhile?

A. It was quite continuous; yes, there wasn't much break.

Q. Did you on your own account give any such orders to Mr. Barber, or did you wait until Mr. White instructed you?

A. I think I waited until Mr. White—went entirely by his instructions.

Q. You can state whether anything was said to Mr. Barber
227 by you from Mr. White to the effect that trades made for Mr. White were to be gambling transactions—or not real transactions—fictitious.

A. No, sir; I think that the telegrams and orders are the instructions that I got from Mr. White. It does not say anything there about them that I know of.

Q. I will show you some of the telegrams and letters. You exhibited the telegrams and the letters also, did you?

A. I think I gave Mr. Barber pretty much all the telegrams when I had any orders; it was the easiest way to fill the order—was to hand him the telegrams.

—. You will please notice if you have collected together those telegrams and letters (handing papers to witness).

A. Well, this telegram here is J. B. White, care of George M. Barber.

Q. Where one is for an order to buy or sell you may please read it; see if it is the usual form.

A. There are no telegrams here to buy or sell.

Q. Did you have a conversation with Mr. White as to July wheat in 1882, as to there being possibly a corner, or as to whether it was desirable for him to sell for delivery in July in 1882?

A. Well, I could not say that I had.

Q. Did you have conversation with him with reference to whether Mr. Barber should default under the contracts in July, 1882?

228 A. Yes, sir; I had a number of conversations about defaulting.

Q. When did those conversations begin?

A. I cannot tell the time exactly, but when the margin or when the difference of the price that the wheat was sold at, and when it got way up in the thirties, why, Mr. White did not want to put up margin unless he had some promise that he would be protected.

Q. How protected?

A. That Mr. Barber would not settle the July deal; that he would default.

Q. Did you attend to the business of Mr. White of putting up the margins?

A. Yes, sir; I think I handled nearly all the money that was put up in margins.

Q. Do you remember any special occasion when that conversation occurred as to any amount of money being paid over, what was said by Mr. White to you and what was said by you to Mr. Barber on the subject?

A. About the 6th or 7th or 8th of July or June—of June, I think—the trade had got some six or eight thousand dollars against Mr. White—that is, the trade was against him more than he had margined here in Chicago. Of course, Mr. White was anxious, and he was in Chicago at the time. I don't remember just how I got a draft for $5,000.00 from Mr. White; New York draft drawn
229 to the order of J. B. White; it was left for me on the desk, and Mr. White went to Fort Wayne; Mr. Barber looked to me for the margins, looked to me for money to keep Mr. White's trade good. I let Mr. Barber see this draft of $5,000.00, and I told him that I thought that Mr. White had evidently omitted to endorse it and what did he think, that I would endorse it by me. Well, Mr. Barber would not take it in that way, and I think I either wrote to Mr. White or telegraphed, but Mr. White answers in one of these telegrams to my communication, "Hold the exchange to protect the deals; will send more if necessary." That exchange referred to is the $5,000.00 draft. I let Mr. Barber see the telegram. I think it was on Saturday, the 10th of June, if I remember right, and Mr. Barber urged upon me, as the deals were so much against Mr. White, that I should go down to Fort Wayne with that draft and get it endorsed, and I did go to Fort Wayne with that draft on Saturday night, and I saw Mr. White on Sunday. We talked the matter over, and I thought that Mr. Barber would not default on his contract, but always said, Mr. Stiles, please omit what you thought.

Mr. DENT: Can you state what Mr. Barber said about it?

A. Well, he always said he would not default—would not
230 default on his contract; had refused to at other times, but I wanted to get that $5,000.00, because I was responsible to Mr. Barber at the beginning of these things that the margin would be kept good, and he let it run on my account, as I understood it. I made an arrangement with Mr. White that I would hold that $5,000.00 draft until Mr. Barber promised that he would default in the July contract for 100,000 bushels of wheat. On Monday I saw Mr. Barber and he made that agreement to me, that he would default in the contract for July wheat, and I turned over the $5,000.00 to him.

Q. What did Mr. Barber say on refusing to default on contracts; what did he say to you?

A. It would hurt his reputation on the board of trade.

Q. You can state whether you had any conversation with Mr. White as to the appointment of a committee to determine the settling price in case the market should be kept up to the high figure supposed to have reached in case it should be kept up until the 31st of July.

A. Oh, yes; he said he was willing to leave it to the committee that Mr. Barber should default, and that it should be left to the committee, and that he would abide by the decision.

231 Q. Was there any conversation between you and Mr. White as to there having been manipulated a corner—a corner having come about in the market so that the wheat could not be delivered?

A. Well, it was generally understood, I think, but I heard a great many conversations that the market was cornered.

Q. I wish to know what was said between you and Mr. White.

A. Well, I could not pin down any conversation to you.

Q. Did you have any latter conversation with Mr. White as to the appointment of the committee to determine the settling price?

A. I don't remember now.

Q. When the month closed was Mr. White here?

A. Yes, sir.

Q. What was he doing here; what did he do; what did he say to you?

A. I don't remember the conversation that was had. He was there in the morning early, and we were talking about the July deal and what was best be done, and didn't know what to do; I didn't know what to do.

Q. Did you do anything yourself in respect to having a committee appointed?

A. No, sir.

Q. Or get Mr. White to do it; did you send him to Mr. A. M. Wright, or did they get into communication; do you know?

232 A. I don't know, Mr. White—I think I went with him up to Mr. Wright's office; I did not go in, in the inside of the rail; Mr. White introduced himself.

Q. At what time was that; was that after the 31st of July, or was it on the 31st?

A. I could not say.

Q. Did you know anything about a tender of red winter wheat being made under any of these contracts?

A. Well, I was informed—not of my own knowledge; I was informed it was made.

Q. By whom were you informed?

A. By, I guess, Mr. White—Mr. Barber.

Q. What did Mr. White say about that in the way of approval or disapproval; what did he say?

A. He was perfectly satisfied; thought it was a good point.

Q. I will call your attention to a letter dated September 5th, I believe it is, 1882, from Mr. White, and will ask you if you communicated with him as to the decision of the committee appointed to fix the price?

A. I think I telegraphed that.

Q. Please look at the letter and see whether you received it (showing witness letter dated September 5th, 1882, from White to Maltman).

A. Oh, yes; well, yes; I received the letter.

Q. You can read the letter if you please.

A. (Reading letter as follows:)

233 "FORT WAYNE, IND., *Sep.* 5, 1882.

"Mr. A. S. Maltman.

"DEAR SIR: The talk about committee does not surprise me. We will now go into court and see if this wonderful Chicago can manipulate a court; I hardly think they can. I will come up and enjoin the money being not paid over, and will then arrange it for a trial.

"R'y yours, J. B. WHITE."

Q. You may state what was done by Mr. White in pursuance of that letter, afterwards, after that time. What was done in the way of taking proceedings in court and having the matter adjudged by the court?

A. I cannot really tell; Mr. White came up; I went up to Mr. Burke's office with him; he had been there previously, however, and I cannot remember any particular conversation.

Q. That was to the office of Mr. John E. Burke, lawyer?

A. Yes, sir.

Q. For what purpose did he go there, if you understood?

A. To join in the injunction.

Mr. STILES: I think that is a pretty free question—what he understood what he went there for.

The COURT: If he understood it from the plaintiff?

234 Mr. DENT: If he went there with Mr. White I suppose he knew Mr. White's purpose, but he can tell whether he did or not.

The WITNESS: Yes, sir; there was so much talk that I cannot really pin down the words, but I went there with Mr. White to get out an injunction to restrain the board of trade from suspending Mr. Barber.

Q. Did he ask you to sign the injunction bond or ask you to do anything about it?

A. I don't remember.

Q. Didn't you in fact sign the injunction bond?

A. I don't remember now.

Q. You can tell whether you kept watch of the suit after that?

A. Yes, sir.

Q. For Mr. White, or what direction he gave you in regard to it?

A. Well, I kept track of the suit.

Q. Did you put up any money for Mr. White on account of that suit?

A. Yes, sir.

Q. Do you remember what moneys you paid out?

A. I paid out $283.50.

Q. Do you know how far the suit was prepared, or the papers were prepared, during Mr. Barber's absence, and by whose directions they were so prepared?

A. Yes, sir.

Q. Will you please state?

235 A. They were prepared under the direction of Mr. White. Mr. Barber was in the East.

Cross-examination by Mr. STILES:

Q. What papers did Mr. White direct should be prepared?
A. Direct me?

(At request of counsel the reporter read that part of witness' direct examination where it states that witness paid $283.50 for Mr. White on account of suit, following which Mr. Stiles asked:)

Q. He reimbursed you for that?
A. Yes, sir.
Q. Now, what papers was it that were prepared under the direction of Mr. White?
A. The injunction papers.
Q. The injunction was prepared under the direction of Mr. White?
A. The papers for an injunction and petition.
Q. What did White say about it? White did not sign any petition, did he? The bill that was filed was a printed bill, wasn't it, already prepared when you went to the office?
A. I said that the papers were prepared under the direction of Mr. White.
Q. Why do you say that?
A. Because Mr. White told me that he would stand all expense.
Q. Oh, well, that is another thing. What directions did White give you about preparing any bill? This is a fact, isn't it,
236 that Barber didn't want to be shoved of- the board of trade?
A. Yes, sir.
Q. And White said he would pay the expense of trying to protect him from being shoved off?
A. Mr. White said he would protect him.
Q. He said he would and he did, didn't he, so far as paying bills are concerned?
A. Yes, sir.
Q. Isn't that about all there was of it? He went to the office of Burke, talked the thing over, and Burke had a bill already prepared, which White never signed, did he?
A. I know that the bill was prepared under the direction of Mr. White.
Q. What do you mean by that?
A. I mean that it was prepared by his instruction.
Q. Wasn't it printed when you got to the office?
A. I suppose it was; there was a number of them there; I saw quite a lot of bills.
Q. This wasn't prepared by his direction; it was already prepared when you got there, wasn't it?
A. That bill?
Q. There were thirty-two bills already printed, weren't there, right in Burke's office?

A. I know there were lots of them; there was a pile of them, and he drew one, Mr. Barber's, but if I signed the bond I have forgotten it.

237 Q. That is all the preparing that White did, was it, what you have said about it?

A. I don't know what he did.

Q. What interest had you in this deal, anyhow?

A. Not a cent.

Q. You don't mean that, do you?

A. I mean it.

Q. Didn't you divide commissions with Barber?

A. No, sir; not a cent that I got on that deal or expect to get.

Q. Well, are you not going to get some?

A. No, sir.

Q. I may be mistaken, but I understood Mr. Barber to testify yesterday that he divided commissions. You say you got no commissions?

A. No, sir.

Q. Never divided commissions with Barber in any of White's deals?

A. I got something, yes.

Q. That is what I am trying to get at?

A. Yes; but you said on this; I didn't get a cent on this deal.

Q. Well, I will change that; this deal has not been settled—the time for paying you your share of commissions has not come, has it?

A. Well, I think it has.

Q. You expect to get your share of the commissions when this is settled, don't you, if Barber wins?

238 A. No, sir; I told Mr. Barber way in June or May that I did not want anything on this; that he was having too much trouble.

Q. Did you hear of the corner at the time that it was said there was a corner there in the market?

A. Oh, I heard it rumored; yes.

Q. Do you recollect how early you heard it?

A. No, sir.

Q. Did you write to Mr. White about it at that time?

A. Oh, I think I did.

Q. What gave you so much interest in this if you were not to have any commissions in it?

A. Well, I was interested in Mr. White's business—well, Mr. Barber's business. I had done a great deal of business for Mr. White. He had always used me well.

Q. What interest had you in Mr. White's business?

A. I was his agent here in Chicago.

Q. Or Mr. Barber's business, I mean? What interest had you in Barber's business?

A. I was the means of bringing Mr. White and Mr. Barber together.

Q. What gives you an interest in Barber's business by reason of bringing these people together? How did that give you any interest in Barber's business?

A. Well, I took orders to Mr. Barber and he reported to me.

239 Q. Suppose you did, what interest did that give you in Barber's business?

A. Oh, I didn't mean Barber's business. I mean the business of Mr. White and Mr. Barber.

Q. You mean you had an interest in White's business and did not have an interest in Barber's?

A. Well, with what Mr. White did with Mr. Barber.

GEORGE F. MORCUM, a witness for the defendant, having been duly sworn, was examined in chief by Mr. DENT, and testified as follows:

Q. What business are you in?

A. Commission business.

Q. With whom?

A. I am a member of the firm of A. S. Maltman & Co.

Q. Were you a member of that firm in 1882?

A. Yes, sir.

Q. You, of course, knew Mr. White and Mr. Barber?

A. I did.

Q. Did you have any conversation with Mr. White about trades which had been made for him or trade by Mr. Barber for the sale of No. 2 spring wheat for July delivery in that year?

A. I did. I had one conversation; I think it was the last

240 day of July. I told Mr. White that Mr. Barber had made a tender of warehouse receipts of No. 2 red winter wheat on those contracts, and Mr. White remarked, "That is good. According to their own rules, they are bound to accept that."

Q. Had you had any earlier conversations with Mr. White before the contracts matured, as to whether it was dangerous to make such contracts with reference to there being a possibility of a corner or something of that kind?

Objected to as leading.

Q. If you had a conversation on the subject with reference to a possibility of a corner?

A. Yes, sir.

Q. You may state what was said by Mr. White?

A. Well, I remember of having a conversation and passing my opinion that wheat was cornered.

Q. When was that?

A. That was a short — previously; I cannot specify the date.

Q. What was said by Mr. White on the subject?

A. Well, Mr. White said, "If it is let, go to a committee," he says, "Let them fix the price."

Q. To what committee?

A. Committee of the board of trade.

Q. You may state whether you had any conversation with

241 him as to whether he desired to keep the deals open. If so, what was said on that subject?

A. Well, he never expressed any idea of having them closed.

Q. What did he say, however?

A. The tenor of his conversation, latterly, always was that he would have it go to a committee; that he would wish Mr. Barber to default on it, and let the committee decide the price; that he was satisfied that there was a corner, and that under their own rules that they could not sustain the value on it.

Q. Did you hear him say anything about joining with others in proceeding against the report of the committee after that report had been made?

A. Yes, sir; he told me that he had been up to see A. M. Wright; that A. M. Wright had a great numbers joined together, and that he thought of going in with them.

Q. What did he say, if anything, about protecting Mr. Barber?

A. Well, he said he would see Mr. Barber protected there.

Q. When did he say that?

A. Well, I cannot fix the date; I have got no interest, and I cannot remember; but I remember his making that observation more than once.

Q. During what period of time did he make it?

242 A. Well, about the time—about the end of that—month, at the time when these settlements were being urged.

Cross-examination waived.

D. C. BANNISTER, having been duly sworn as a witness on behalf of the defendant, was examined in chief by Mr. DENT and testified as follows:

Q. Mr. Bannister, in what business are you?

A. I am book-keeper for Mr. Barber.

Q. How long have you been with Mr. Barber?

A. Over three years.

Q. You have something to do with —, did you, that have been spoken of here?

A. Yes, sir; after they were made I took charge of them.

Q. What charge did you have over them?

A. To see that they were checked with the parties.

Q. You checked the trades with the parties with whom they were made?

A. Yes, sir.

Q. And did you make entries on the books, too?

A. Yes, sir.

Q. Make statements out—statements of account?

A. Yes, sir.

Q. I will call your attention to some notices. Did you conduct some of the correspondence yourself with Mr. White about these matters?

A. Very little, I think.

243 Q. What part of the correspondence did you conduct with him?

A. I only wrote to him when Mr. Barber was away.

Q. Along towards of the closing of the transactions, making settlements, did you conduct some of the correspondence?

A. Well, I took orders to Mr. Barber and he reported to me.
239 Q. Suppose you did, what interest did that give you in Barber's business?
A. Oh, I didn't mean Barber's business. I mean the business of Mr. White and Mr. Barber.
Q. You mean you had an interest in White's business and did not have an interest in Barber's?
A. Well, with what Mr. White did with Mr. Barber.

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Q. Were you a member of that firm in 1882?
A. Yes, sir.
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A. I did.
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A. Yes, sir; after they were made I took charge of them.

Q. What charge did you have over them?

A. To see that they were checked with the parties.

Q. You checked the trades with the parties with whom they were made?

A. Yes, sir.

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A. Yes, sir.

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A. Very little, I think.

243 Q. What part of the correspondence did you conduct with him?

A. I only wrote to him when Mr. Barber was away.

Q. Along towards of the closing of the transactions, making settlements, did you conduct some of the correspondence?

A. I think very little; I am quite sure I wrote one letter.

Q. You may look at this letter and see whether that is the letter you refer to as having been written by you (handing witness letter).

A. This is my letter.

Q. Will you please read the letter?

A. (Reads letter, dated Chicago, April 20, 1883, addressed — J. B. White, signed G. M. Barber, per Bannister, as follows:)

"CHICAGO, *Apr. 20th*, '83.

J. B. White, Esq., Fort Wayne, Ind.

DEAR SIR: Complaints have been preferred against me to the board of directors of the board of trade for non-payment of $1,537.50, due C. E. Foss & Co., and $468.75, due C. B. Van Kirk, on account of trades in July wheat for you. Such complaints are to be heard Tuesday next, at 3 p. m. Can you protect me in any way?

Respectfully, G. M. BARBER,
Per BANNISTER."

Q. Did you get any communication from Mr. White?

244 A. I received a letter from Mr. White. I am not sure whether it was an answer to this or not; I think it was.

Q. You think it was a letter which came from Mr. White, do you?

A. I know I received one letter from him.

Q. On what subject?

A. It was about this July deal.

Q. When was that received?

A. It must have been quite awhile after the date of this letter that I received that.

Q. Did Mr. White do anything, to your knowledge, to protect Mr. Barber in pursuance of that letter that you wrote him?

A. I don't remember what that letter was that he wrote.

Q. In pursuance of that letter you wrote him, I ask you if he did anything, to your knowledge, to protect Mr. Barber?

A. At the time these injunctions were got out?

Q. At the time the complaints were made before the board of trade—the board of directors.

A. He did nothing until the time that they were getting out these injunction suits.

Q. What did he do then?

Mr. STILES: So far as you know, let me add.

A. I know that he was interested in getting out these injunctions.

Mr. DENT: In what way?

245 A. I know that he appeared before Mr. Burke to see what could be done, and he wished to join with the others in getting out these injunction papers, and I remember of his saying to me that he wished he could take it into his own hands, so that Mr. Barber would not be troubled with it.

Q. After you wrote him in regard to the complaints that were made before the board of trade, did he do anything?

A. Not that I remember.

Q. Do you remember Mr. Barber waiting for him to do something after those complaints were made? Were you present as a witness, or did you attend the meeting of the board of directors when those complaints were to be heard?

A. Yes, I did; I attended all those meetings to find out what was being done, so that I could post Mr. Barber when he returned.

Q. Mr. Barber was absent at the time the complaints were preferred, was he?

A. A good many of them were.

Q. Was he absent at the time you wrote the letter to Mr. White?

A. This letter of April 20th?

Q. Yes, sir.

A. Yes, sir; I believe he was.

Q. Did Mr. Barber pay over the money immediately when
246 these complaints were preferred against him, do you know?

A. No, sir.

Q. When did he pay it over?

A. I don't remember the day, but not until it was necessary for him to pay them.

Q. Why necessary?

A. Or be suspended from the board of trade.

Cross-examination waived.

The COURT: Suppose you now give Mr. Dent a memorandum of the different persons with whom you had these trades.

Mr. DENT: I can tell from the checks. They were with twelve commission houses or firms. A. H. Bliss & Co., 10,000 bushels; amount paid, $1,043.75; J. Crighton & Co., 5,000 bushels, $500.00; C. E. Foss & Co., 1,500 bushels, $1,537.50; H. G. Gaylord & Co., 5,000 bushels, $493.75; Gregg, Son & Co., 25,000 bushels, $2,575.00; Hallam & Applegate, 5,000 bushels, $518.75; A. M. Henderson, 5,000 bushels, $481.25; F. B. Hinckley & Co., 5,000 bushels, $468.75; Robert Linbloom & Co., 5,000 bu., $462.50; F. G. Logan & Co., 5,000, $500.00; Pickering & Co., 1,000, $1,081.25; Ulrich, Busch & Co., 5,000, $531.25.

The checks showing such payments by defendant Barber were read in evidence and are as follows:

"No. 11885 CHICAGO, *April 24th*, 1883.

247 Corn Exchange Bank pay to the order of A. H. Bliss & Co. one thousand forty-three and $\frac{75}{100}$ dollars, $1,043.75.

G. M. BARBER.

[Rev. stamp, 2 cents.]

Certified Apr. 23, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago."

Endorsed: For deposit account of A. H. Bliss & Co.

"No. 11882. CHICAGO, *April* 23, 1883.

Corn Exchange Bank pay to the order of John Crighton & Co. five hundred dollars, $500.00.

G. M. BARBER.

[Revenue stamp, 2 cents.]

Endorsed: Paid through Chicago clearing-house, 23 April, to the Bank of Montreal.

Certified Apr. 23, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago."

"11887. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of C. E. Foss & Co. fifteen hundred thirty-seven and $\frac{50}{100}$ dollars, $1,537.50.

G. M. BARBER.

[Revenue stamp, 2 cents.]

Certified Apr. 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit to credit of S. E. Foss & Co. Paid through Chicago clearing-house, Apr. 25, 1883, to Canadian Bank of Commerce."

"No. 11880. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of H. G. Gaylord & Co. four hundred ninety-three and $\frac{75}{100}$ dollars ($493.75).

G. M. BARBER.

[Revenue stamp, 2 cents.]

248 Certified April 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit to the credit of H. G. Gaylord & Co. Paid through Chicago clearing-house only. Paid, April 25, 1883, to First Nat'l Bank."

"No. 11888. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of Gregg, Son & Co. twenty-five hundred and seventy-five dollars, $2,575.00.

G. M. BARBER.

[Revenue stamp, 2 cents.]

Certified Ap'l 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit account of Gregg, Son & Co., Union Nat'l Bank. Paid through Chicago clearing-house."

"No. 11883. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of Hallam and Applegate five hundred eighteen and $\frac{75}{100}$ dollars, $518.75.

G. M. BARBER.

[Revenue stamp, 2 cents.]

Endorsed: For deposit in Continental Nat. Bank to the credit of Hallam & Applegate. Paid through Chicago clearing-house, Apr. 25, 1883, to the Continental Nat. Bank."

"No. 11881. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of F. G. Logan & Co., five hundred dollars, $500.00.

249 G. M. BARBER.

[Revenue stamp, 2 cents.]

Certified Apr. 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit account of F. G. Logan & Co. Paid through Chicago clearing-house, Apr. 25, 1883, to the Continental Nat. Bank."

"No. 11879. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of A. M. Henderson four hundred eighty-one and $\frac{25}{100}$ dollars, $481.25.

G. M. BARBER.

[Revenue stamp, 2 cents.]

Certified Apr. 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit in the Canadian Bank of Commerce to the order of A. M. Henderson. Paid through Chicago clearing-house, Apr. 25, 1883, to Canadian Bank of Commerce."

"No. 11878. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of F. D. Hinckley & Co. four hundred sixty-eight $\frac{75}{100}$ dollars, $468.75.

G. M. BARBER.

[Revenue stamp, 2 cents, canc'l'd.]

Certified Apr. 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: F. D. Henkley & Co., H. D. V., for deposit with Bank of Montreal to the credit of Chas. B. Van Kirk & Co., per H.
250 D. V. Paid through Chicago clearing-house, 25 April, 1883, to the Bank of Montreal."

"No. 11882. CHICAGO, *April* 23, 1883.

Corn Exchange Bank pay to the order of John Crighton & Co. five hundred dollars, $500.00.

G. M. BARBER.

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Corn Exchange Bank pay to the order of F. D. Hinckley & Co. four hundred sixty-eight $\frac{75}{100}$ dollars, $468.75.

G. M. BARBER.

[Revenue stamp, 2 cents, canc'l'd.]

Certified Apr. 24, 1883.

____ ____,

Teller Corn Exchange Bank, Chicago.

Endorsed: F. D. Henkley & Co., H. D. V., for deposit with Bank of Montreal to the credit of Chas. B. Van Kirk & Co., per H.
250 D. V. Paid through Chicago clearing-house, 25 April, 1883, to the Bank of Montreal."

"No. 11877. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of Rob't Lindblom & Co. four hundred sixty-two and $\frac{50}{100}$ dollars, $462.50.

G. M. BARBER.

[Revenue stamp, 2 cts.]

Certified Apr. 24, 1883.

___ ___,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit to credit of Robert Lindblom & Co. Pay through Chicago clearing-house only. Paid, Apr. 25, 1883, to Northwestern National Bank."

"No. 11886. CHICAGO, *April 24th*, 1883.

Corn Exchange Bank pay to the order of Pickering & Co. one thousand eighty-one and $\frac{25}{100}$ dollars, $1,081.25.

G. M. BARBER.

[Rev. stamp, 2 cts.]

Certified Apr. 24, 1883.

___ ___,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit to credit of Pickering & Co. Paid through Chicago clearing-house, 25 Apr., 1883, to the Bank of Montreal."

"No. 11,884. CHICAGO, *April 24th*, 1883.

251 Corn Exchange Bank pay to the order of Ulrich Busch & Co. five hundred thirty-one and $\frac{25}{100}$ dollars, $531.25.

G. M. BARBER.

[Revenue stamp, 2 cts.]

Certified Apr. 24, 1883.

___ ___,

Teller Corn Exchange Bank, Chicago.

Endorsed: For deposit at International Bank to the credit of Ulrich Busch & Co. International Bank, paid. Paid through clearing-house, Apr. 25, 1883, — Nat'l Bank of Illinois."

Defendant then offered and read in evidence letters from J. B. White to George M. Barber of the following dates: May 26th, 1882; June 2d, June 6th, June 7th, June 30th, July 1, July 18, July 24, July 26, August 15; which are as follows:

"FORT WAYNE, IND., *May* 26, 1882.

Mr. George M. Barber.

DEAR SIR: Your tel's stating bo't 40 M, at 1.24,

" " 50 M, " 1.23, is to hand; also tel. stating sold 20 at 1.23¾ is all satisfactory; but, for the present, sell no more. I have just wired you to that effect, as I thought you might sell 40 more, as I had ordered Mr. Gregg to replace the 40 at 1.24¾.

R'y yours, J. B. WHITE."

252 "FORT WAYNE, IND., *June* 2, 1882.

Mr. George M. Barber.

DEAR SIR: Enclosed please find 2,000. Will send more to-morrow if markets go up, but I think it has seen the top; but no matter where they carry it I will follow it up, so please don't get alarmed as to the result.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *June 6th*, 1882.

Mr. G. M. Barber.

DEAR SIR: Enclosed you will please find N. Y. exchange for one thousand dollars. Please place the same to my credit. We notice the market a little higher; if any change, will send more to-morrow.

Yours resp't., J. B. WHITE."

"FORT WAYNE, IND., *June* 7, 1882.

Mr. G. M. Barber.

D'R SIR: It was to- late to arrange for money; will do so first thing in the morning and send you 3 or 5 thousand, as it may be needed. Why don't the committee determine a margin value and make the clicque put up; any one can see it is cornered, and allowing them to run it up as they please is not right unless they also margin; but when the end of July comes along they must let go or bring up — August; they can't settle this way at last. What do you think?

Resp'y, J. B. WHITE."

253 "FORT WAYNE, IND., *June* 30, 1882.

Mr. G. M. Barber.

D'R SIR: Yours came to hand. I know how anxious you feel in the matter, but the markets has gone, you may say, beyond all reason, yet I think the turn will come now, and better; as it may be, I will follow it up; there is no use taking the other side now, everything is to- high. The prospects is fine; corn in our region, where a few weeks ago was in doubt, now gives promise of a large crop; this wet, damp, warm weather is just the making of it, and oats and wheat is in very fine condition. It is a gar-oting plan these gents, with their money, is paying; there is no fair trading in it. Say Spring to D'y is not worth over $1.00. I have arranged to-morrow for 5,000, and will send it so you will receive it Monday. Kind regards.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *July* 1, 1882.

Mr. G. M. Barber.

D'R SIR: Noticing the markets closed a little easier, I only sent you $3,000, which will more than cover the deal at present, and it looks as if the top had been reached. If it goes more against me, will send more. The reports all around our region continue

254 very favorable for everything. Some wheat will be cut here on or the day after the 4th; it looks splendid. The clicque

will have their hands full by the last of July, and farmers are in good spirits, and now brag about the corn prospects which 3 weeks ago looked very gloomy. One man said to-day he had corn waist high.

Resp'y, J. B. WHITE."

"FORT WAYNE, IND., *July* 18, 1882.

Mr. G. M. Barber.

DEAR SIR: I am glad to see the markets lower; it is all nonsense they should been up where they were, but these clicques has scared everybody out of the market. I mean a great many, for all sellers, run the risk of being cornered. Just look at such an unreasonable state of affairs as No. 2 spring July at 1.28 and the same wheat the same month at 1.08. It simply drives away trade. You can illustrate it very well in my own case. Had there been no corner I would, no doubt, have sold ere this at least 500, five hundred, thousand bushels, for I had confidence in a declining market from the prospect, but what is a man's judgment worth if these outlaws is permitted to gobble up and run a corner in face of your rules against it. It is the very fact of your having rules against such high-
255 handed work that gives Chicago the preference above those markets who have no rules against corners; but here, in spite of your board rules, these fellows, because they have money, are permitted to jump in and ruin your trade, my trade, and all other fair, common, men's business. If the market goes against the short seller, legitimate, he will not complain. I trust your board will sit down on these chaps and give fair play.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *July* 24, 1882.

Mr. G. M. Barber.

DEAR SIR: Would it not be well to call the committee to fix a marginal price on the July wheat? It is a mockery to permit such a state of affairs, and call it fair trading, as August wheat at 99c. and July 1.28. If it is not margined down they may scratch the trades, as I hear it talked of, and this will compell them to margin down as we have up, and also compell them to abide the decision of the committee at the end of the month.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *July* 26, 1882.

Mr. G. M. Barber.

256 DEAR SIR: Your 2 letters came duly to hand, and contents noted. That rule you speak of is a very good one for the clicque, and it looks unreasonable there should be such a plan—if the price is below the clicque's purchase then to allow them to scratch the trade, and if above their purchase then to make the shorts settle. This is certainly unfair. When they go into cornering a market with their eyes open, in face of the rules of the board to the contrary, they should be made amenable to its rules. As it stands they

might just as well make No. 2 spring 2.00. I will be up soon and see you. Pork is all right. I will put it out again; may tel. you to-morrow to close pork on call.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *Aug.* 15, 1852.

Mr. G. M. Barber.

DEAR SIR: Since arriving home I have had my attorney examine into the July deal; provided him with articles of the board of trade to assist him in his searc-es; and he, after carefull deliberation, concludes that the delivery you made or tendered is good and is binding on the buyer, and that we can collect the difference in court; so that please make out claims against them, and if the
257 committee does not give a fair and reasonable decision we will go into court and maintain our case. It is high time these gentlemen who runs such wicked deals should be let to know there is others who have rights.

R'y yours, J. B. WHITE."

Also telegrams from plaintiff to defendant, dated September 1, 1882, — September 11, 1882.

The COURT: Those telegrams do not relate to this controversy, and I do not see how they are at all material.

Defendant offers and reads in evidence letters from J. B. White to A. S. Maltman of the following dates, respectively: May 19, 1882; May 20, June 7, June 10, June 12, June 28, June 26, June 29 (in part), June 30 (in part), July 1 (in part), July 6th, July 17, July 21, July 25 (in part), August 2 (in part), September 5, September 9, September 12, October 2, October 27; which are, respectively, as follows:

"FORT WAYNE, IND., *May* 19, 1882.

Mr. A. S. Maltman.

DEAR SIR: Your favor came duly to hand; also your tel. about money. Enclosed please find acceptance on me for $2,000, and I will see in the morning what I had best do. If the market
258 is not cornered it will come back all right; if it is then there is no telling where it may go; and I think I will tel. Barber to lighten the load in the morning. If you can't use this please tel. me, and I will send it from here. Any way, tell him not to fear any loss. I will make it good, no matter what it is. Wheat will sell at 1.00 before the 1st of Aug't; else the large-crop prospect is worth nothing.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *May* 20, 1882.

Mr. A. S. Maltman.

DEAR SIR: Yours came to hand, and not hearing from you I thought you had used the 2,000 acceptance; if not, and you can't, I will send you money, 2,000 at least, Monday. If the July deal is not cornered you will see it 1.00 before end of July. It can't be held up with such a prospect; besides, if they do send it up, they must

take August with it, for they are now 12c. apart, and this is as much as they can stand, even on a corner. June they can successfully corner, no doubt, and I think they will, for they can carry June up 10c. or 12c. over July and still be sustained, but if you notice July & August *is* now at their limit of September on a corner. Nothing special.

R'y yours, J. B. WHITE."

259 "FORT WAYNE, IND., *June* 7, 1882.

Mr. A. S. Maltman.

D'R SIR: Your letter, also your tel., came to hand, in regard to money, to-night. It was to- late to make arrangements, but to-morrow, in the morning, I will do so, and send $3,000 or 5,000, if necessary. This can't keep up much longer, yet they may run it to 146c., but the end of July will come along, and then they must bring August up or drop July. It is a wonder they don't now make them strike a margin value. It is unfair to allow them to do as they are doing. As it is, the rules don't margin Aug., and they can place the price where they please as long as it costs them nothing.

R'y y'r's, J. B. SMITH."

"FORT WAYNE, IND., *June* 10, 1882.

Mr. A. S. Maltman.

DEAR SIR: Yours came to hand; also your telegram in regard to the exchange; will say you hold it to protect Mr. Barber in the deals. I want he should feel perfectly safe, and I will send more, if necessary, but I do not want to be slaughtered or imposed on. I don't fear the result of the deal, and at the end of July I am
260 willing to abide the decision of the board as to the value of the wheat, and even if it should be 1.40, I will pay it. I have done business 15 years, and no man has ever lost a cent on me, and neither you or Mr. Barber shall loose a cent. But why should I be compelled to be kept putting up money in such a confidence game as to force July wheat up 24c. above August and 20c. above the regular grade for the same month? If it is true they can do this, then there is no limit to the extortion; they could simply put it to 1.50, 1.60, or 2.00, if you please, but they can't compell settlements at any such prices. I will wager a $100 that July wheat, regular, will not be worth over 1.00 the last day of July. Then how can they reasonably continue such an oppression? This is not legitimate trading; it is simply violating the rules that govern the board; but even if I put up $20,000 there is no safety for me unless Mr. Barber and other brokers *is* willing to stand by me and others who they do business for. I have no fault with Mr. Barber, and well do I understand his anxiety, and if they have compelled him to put up more money than he ought to, which I know they
261 have, he will get it all back, and interest; but if the brokers who do our business will not stand by and protect us, who will? They can do it if they want to. At the end of July or sooner, if we close the deal, I will cheerfully foot up all losses, no matter how severe they may be. I consider an obligation of this kind just

as sacred as a sugar or coffee trade, and all I ask is to hold the trade till I consent to close it out, and I assure you, as previous-stated, neither you, Mr. Barber, or any other party shall loose a dollar.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *June* 12, 1882.

Mr. A. S. Maltman.

D. SIR: Yours came to hand and your tel.; glad Mr. Barber is satisfied. No matter who he looses by, he shall never loose a cent by me; but — such cut-throat business as they are practicing I must have some protection. By the end of July we will come out ahead. Nothing special. Kind regards.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *June* 28, 1882.

Mr. A. S. Maltman:

DEAR SIR: Yours came to hand; also notes returned. I
262 notice the markets are no worse against me, so that if Mr. Barber is not uneasy just let it alone. Any few thousand he is over I will cheerfully allow him interest, and if the markets go no worse I don't think he will be uneasy; but if he is, and will not care to take my individual note as security for, say 5,000, then I will borrow, but this I don't want to do if I can avoid it; never was refused; yet if this will be all right and satisfactory it will be an accommodation to me from Mr. Barber, and he will be as safe as to my note being paid as any note in the country. I don't want to close out, for I think after the first of July things will turn; they can't hold it till the last of July.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *June* 26, 1882.

Mr. A. S. Maltman.

DEAR SIR: Yours came to hand; also tel. about potatoes; but Cincinnati is 4.00; so we order there just now, but keep us posted, so we can know the market. I notice things up to-d'y, and the money is exhausted; so if you are not uneasy and will accept either of the enclosed to hold in reserve for Barber I will be obliged if
263 you do so. I have no fear for the markets, but they come back, even should it take a month to do it; but the fine prospects will tell. I enclose you the note paid to show you that we sent the money a week ahead, yet they did not return the note till it was due. I think the bank will discount; if they don't it is all right; can get it here, but prefer not if it can be had in Chicago. It is only the interest *it* is lost; the money will all come back. I don't dre-d it, even if 20,000 was up. It is only a question of being able to borrow. The markets is bound to come back sooner or later, yet it may not be 2 or 3 mos.; but even then it is only the interest, say, on 20,000; 3 mos. is not over 500.00; so that is all the actual loss they are requiring all who can't stand it, and will succeed no

doubt in cleaning out a good many. I would prefer $4,000 if you think best; but if not, then let it go; or 2,000, just as you think the bank will be most willing to do.

R'y yours, J. B. WHITE.

P. S.—Please find notes in place of accept."

"FORT WAYNE, IND., *June* 29, 1882.

Mr. A. S. Maltman.

264 DEAR SIR: Yours came to hand. I went to the bank and they promised me 5,000 Saturday, so that please tell Mr. Barber he will have that much Monday morning. This upgrade can't hold forever, and I am satisfied it is simply a hard push to compell all the shorts to settle up, but by the end of July the new wheat—red winter—will change the position; Kansas and Missouri, by that time, will have several millions bushels in Chicago; all prospects point that way. Potatoes we get from St. Louis at 4.10, del. here; got 100 b'ls to-d'y. This is our best market at present. Peaches were badly specked and damaged; strawberries good, but small.

Y'rs, J. B. WHITE."

"FORT WAYNE, IND., *June* 30, 1882.

Mr. A. S. Maltman.

D'R SIR: I wrote Mr. Barber to-day; that 5,000 will go to-morrow. Peaches to-day we did not get — express; out of them hardly a peach A R X. Nothing special. Potatoes we now get in St. Louis.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *July* 1, 1882.

Mr. A. S. Maltman.

D'R SIR: Noticing the markets closed easier, only send 3,000; should they go against me will send more. Please give to Mr. Barber and explain to him; I will write him also. Berries

265 to-day were good; could sold twice as many, but heretofore have been some— of a drug. We may close on the 4th; in that event will not need any berries for that day.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *July* 6, 1882.

Mr. A. S. Maltman.

D'R SIR: Yours came to hand. I notice the markets are up some, but not much; these corn gents will get enough soon. Ills., no doubt a great portion of it is bad, but Nebraska, Mo., Ohio, Ind., Mich'n, and all the other States has a fine prospect; all they can say it is two weeks late, and that will more than be made up, as the weather is now setting in warm; just the time it should, as the cool, damp weather has secured a large crop of wheat, potatoes, hay, grass, & oats, and now the warm weather comes to make the corn. Our farmers here are quite buoyant at the prospects. Nothing special.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *July* 17, 1882.

Mr. A. S. Maltman.

D'R SIR: Yours came to hand. Nothing special to write about, as we telegr'p'd for all we need. I am glad to see the markets go off; this weather is splendid for all crops; the corn is making rapid growth, and wheat is all cutt, or nearly so, around here, and
266 an immense crop of oats in prospect. Our farmers say they never seen as good a prospect for all crops, taken as a whole. Potatoes is also extra good.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *July* 21, 1882.

Mr. A. S. Maltman.

D'R SIR: Your T. D. came to hand; the price at 1.33 is not, considering the situation, probably to- high for wheat, for the reason that in New York red wheat was 1.48 & 1.50, and July in Chicago 1.34; but the August option does not bear the relation to July now that July did to June then; hence the July settlement will present a different position, for New York red is now 1.20, Chicago August 1.06. Supposing this position keeps as it is, how could a committee say July was worth over 1.10 or 1.15 at the extreme.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *July* 25, 1882.

Mr. A. S. Maltman.

D'R SIR: I hope you got of- the melons to Warsaw; it is for a sick person—those for her; please send the best as low as you can; they seem high. B. berries we now get in Cincinnati at 8.00. 2 Puh stand. Send 1 bunch No. 1 bananas; the markets about the
267 same; it will break up the clicque before they are through with it; no committee will allow over 1.10 to 1.12c.; at highest, spring is 1.14c. in N. Y.

R'y y'rs, J. B. WHITE."

"FORT WAYNE, IND., *Aug.* 2, 1882.

Mr. A. S. Maltman.

D'R SIR: Peaches to-day were very soft & poor; we lost on them, and the tomatoes, via freight, does not do; they became soft and damp, so that hereafter we will best have all via express. I am consulting attorneys here as to the claim on the No. 2 delivery, and will let you know soon what they think; but it is my opinion that the full damages can be collected, and besides had I known the force of the rules as I do now, would simply give it no concern but sold at auction as Wright & others did; then pushed them.

R'y y'rs, J. B. WHITE."

268 "FORT WAYNE, IND., *Sept.* 9, 1882.

Mr. A. S. Maltman.

DEAR SIR: Yours came to hand; also telegram. I am glad Mr. Barber is at home, and will attend to it Monday. It don't seem to me any short; will accept anything less than an absolute scratching

of the trade. If they do consent to this, then this will be a great sacrifice, as they loose by such a cause all their profits of 20 to 25c. per bushel, and I feel satisfied if we go to court we will be sustained in this position. Yet, to avoid all litigation and preserve harmony, this might be acceeded to, but less than this will not, I think, be entertained for a moment. We get a great many peaches just now from Michigan. I hope you will get some salt B. We are out.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *Sept.* 12, 1882.

Mr. A. S. Maltman.

DEAR SIR: Yours to hand. If Mr. Barber must have money I will send it, but I think he can surely take care of this much a little while. Of course, the 12,000 dollars is all tied up in one sense, but not in reality, and it will never be surrendered to the clicque. No court will ever decree such an unrighteous thing. The load is
269 not much, and I shall not put out any more; it will soon decline; it can't be kept up much longer

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *Oct.* 2, 1882.

Mr. A. S. Maltman.

DEAR SIR: Nothing special to write about. I notice the court proceedings in the July case, and think from what is alleged, with the facts presented, the court will sustain the injunction; if not, then the next corner will be 2.00 in place of 1.35.

R'y yours, J. B. WHITE."

"FORT WAYNE, IND., *Oct.* 27, 1882.

Mr. A. S. Maltman.

DEAR SIR: The pork on light receipts I closed, thinking it could be put out at higher prices, but it may not. As it is, please get the ballance from Mr. Barber, with a statement of how much he reserves for the July deal, and oblige,

R'y yours, J. B. WHITE."

Also reads in evidence rule 24 of Board of Trade Rules of 1882, commencing on page 41, and reading the six sections ending on p. 46, which is as follows, to wit:

Rule XXIV.—Margins on time contracts.

270 SECTION 1. On time contracts purchasers shall have the right to require of sellers, as security, ten (10) per cent. margins, based upon the contract price of the property bought, and further security from time to time to the extent of any advance in the market value above said price. Sellers shall have the right to require as security from buyers ten (10) per cent. margins on the contract price of the property sold in addition — any difference that may exist or occur between the estimated legitimate value of any such property and the price of sale. All securities or margins shall be deposited either with the treasurer of the association or with some bank duly

authorized by the board of directors to receive such deposits: Provided, Such deposit shall not be made with any bank or banks to which the party calling for said security or margin shall expressly object at the time of making such call. But in such case the deposit shall be made with some duly authorized bank not thus objected to or with the treasurer of the association, as the depositor shall elect.

SEC. 2. All banks which may be appointed to act as depositories for securities or margins shall execute and file with the secretary of the association a good and sufficient bond, with sureties, to be approved by the board of directors, for the proper disposal of the said securities or margins in accordance with the provisions of the rules, regulations, and by-laws of the association. Said banks shall issue certificates in duplicate, not transferable, for all such deposits. Said certificates shall state by whom the deposit was made and for whose security the same is held; that the deposit has been made under the rules of the board of trade, and is payable upon the return of the certificate or its duplicate duly indorsed by the parties to the contract or contracts or on the order of the president of the board of trade, as provided by section 6 of this rule. Said certificate shall be in the following form, to wit:

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"Original (or) duplicate. Not negotiable or transferable.

"CHICAGO, —— —, 18—.

"—— —— has deposited with this bank — dollars as margin or security on a contract or contracts between the depositor and ——, which amount is payable on the return of this certificate or its duplicate duly indorsed by both of the above-named parties or on the order of the president of the Board of Trade of the City of Chicago indorsed on either of the original or duplicate hereof, as provided by the rules of said board of trade, under which the above-named deposit has been made.

272

"—— ——, *Cashier.*"

All deposits so made shall be held to have been made as security for the faithful fulfillment of any contracts made or to be made between the parties during the time the deposit shall remain unpaid: Provided, It shall be competent for either party to a contract to demand that the certificate shall express the particular contract upon which the deposit shall have been made, and in such case the deposit shall be applicable only to the settlement of that contract.

SEC. 3. The treasurer of the association shall, in like manner and under like safeguards, receive deposits for securities or margins and issue certificates for the same, payable as is provided by section 2 of this rule.

SEC. 4. The party depositing securities or margins shall, within one hour from the time such deposit shall be called, deposit with the secretary of the association or with the party calling for such deposit the duplicate certificate for the same in due form, as provided for in section 2 of this rule.

SEC. 5. Should any party called upon as herein provided
273 for fail to deposit the security or margin called within the next banking hour thereafter the party making such call shall have the right, if he be the seller, to resell the property for account of the delinquent, such resale to be for the same delivery as was named in the original contract; if he be the buyer he shall have the right to repurchase the property for account of the delinquent, deliverable at the time named in the original purchase. In either case he shall at once communicate to the delinquent the action he has elected to take, and all losses or damages on such defaulted contract shall be at once due and payable the same as though said contract had fully matured. The party so calling may, however, elect to permit the contract to stand, in which case no notice to that effect shall be necessary to the delinquent: Provided, When the call is made during the general meeting of the association, between 11 a. m. and 1 p. m. the deposit shall be made before 2 o'clock of the same day. All notices for the call of margin or of the closing of contracts under this rule may be served on the party called either in person or by leaving a written notice at his place of busi-
274 ness, or may be served in person upon his authorized representative or upon any clerk representing the party on 'change; and in case the party called upon shall not be known to have a regular place of business a written notice left in the office of the secretary of the board shall be deemed sufficient.

SEC. 6. Upon the fulfillment or settlement of any contract or upon the closing of any contract under the provisions of section 5 of this rule, deposits upon which have been made, and when the full adjustment of all differences relating to the same shall have been effected, the deposits shall thereupon be payable to the party depositing the same; and the joint indorsement of both parties upon the certificate shall be a sufficient authority to the party holding the deposit to pay the same to the holder of the certificate, or, in case of a failure between the contracting parties to adjust and settle their respective claims upon the deposit within three (3) business days after the maturity of all contracts upon which the deposit is applicable, the matter in dispute shall, upon the application of either party to such contracts, be submitted to a select committee of three disinter-
275 ested persons, members of the association, to be appointed by the president, which committee shall, without unnecessary delay, summon the parties before them and hear such evidence, under oath, as either may wish to submit touching their claims to the deposit, and shall, by a majority vote, decide and report to the president of the board in writing in what manner and to whom the deposit is payable, either wholly or in part; whereupon the president shall indorse on either the original or duplicate certificate an order for the payment of such deposit, in accordance with the decision of said committee, and such order shall be a sufficient warrant to the party holding the deposit to pay the same in accordance with such order. In case it should occur that by reason of changes in the market or of delivery upon or the settlement of a portion of the contracts upon which margins or securities that have been deposited

are properly applicable under this rule that a larger sum remains on deposit than is contemplated by section 1 of this rule upon then existing unadjusted contracts between the parties, and
276 either party to such contract should refuse to release such excess of deposit, the president of the board is authorized, upon a representation of the facts and admission or proof that such excess ought to be released, to order such release and payment to be made to the party to whom it rightfully belongs by the indorsement of an order to that effect on either the original or duplicate certificate or certificates issued for such deposits: Provided, In case of such disagreement no surrender of the deposit shall be ordered until the board of directors shall have first estimated and determined the value of the property covered by any contract upon which the deposit has been made and upon which a default has occurred on the day of such default in case either party shall request such decision, nor shall any such surrender be ordered pending any arbitration touching the rights of the parties under the said contract or contracts or in case the party refusing to adjust the dispute shall signify his willingness to submit the matter to arbitration."

The defendant then rested his case; which was all the evidence introduced by either party to said suit.

277 (Endorsed:) Filed May 29, 1884. Wm. H. Bradley, clerk.

278 *Bill of Interpleader.*

THE BANK OF BRITISH NORTH AMERICA
vs.
JAMES B. WHITE and GEO. M. BARBER. } In Chancery.

GEORGE M. BARBER sworn in his own behalf herein May 27, 1884.

Direct ex. — Mr. DENT:

Q. What is your name?
A. George M. Barber.
Q. You are one of the parties to this suit?
A. I am.
Q. Were you concerned in making the deposit of monies in controversy in this case?
A. I was.
Q. How did the monies happen to be in the Bank of British North America?
A. I simply had a bank account there. I had first an account in the Merchants' Bank of Canada, and they closed up and I transferred my account to the Bank of British North America.
Q. How were these monies seperated from your account otherwise?
A. Not seperated at all. In fact I had two bank accounts, but I am not sure that any money that I got from Mr. White was deposited in that bank. I cannot say whether it was or not now. I could by looking it up.

279 Q. If you received money from Mr. White on account of margins, or to protect sales made by him, would you credit him with those monies?

A. Yes, sir.

Q. What did you do with reference to securing persons with whom you dealt on contracts—you, for *his* instance?

A. I should put up margins in some bank acceptable by the board of trade when called upon by the parties with whom I had made those trades to do so.

Q. You did put up margins in some cases, did you not?

A. I did.

Q. You did under what arrangement or rule of the board of trade, if any?

A. Well, it is under the rule of the board of trade, but I cannot say what one, if you want the number or anything of that kind.

Q. There were certain rules read in evidence in the suit at law of Mr. White against yourself, which was lately decided in the United States court, those rules being in a pamphlet copy of the rules of the board of trade in force January 1st, 1882, being sixth sections of rule XXIX, commencing at page 41 of the pamphlet. (These are the same that are to be embodied in the transcript of evidence in this case.) Will you please look at them and state whether your deposits were made in pursuance of those rules?

(Witness examines rules.)

A. Yes, sir; they were.

280 Q. When you made a deposit did you receive any evidence of the deposit?

A. I received a certificate of deposit payable to the joint order of myself and the party calling for the deposit, and also a duplicate of that certificate; of that an original and duplicate; the original I kept, the duplicate I immediately handed to the party calling for the security.

Q. These were time contracts, were they, which you had made for Mr. White?

A. Yes, sir.

Q. With reference to what time as to delivery?

A. The month of July.

Q. In what year?

A. 1882.

Q. Now, can you give the form of certificate of deposit which was issued to you; where you made the deposit? Here is the form that is in the answer. I refer to it to refresh your recollection.

A. I should say that this is the form.

(Witness reads:)

BANK OF BRITISH NORTH AMERICA,
CHICAGO (date).

This day deposited with this bank — dollars as margins or security on a contract or contracts between the depositor and ——— ———, which amount is payable on the return of this certificate or its dupli-

cate duly endorsed by both of the above-named parties or on the order of the president of the Board of Trade of the City of
281 Chicago, endorsed on either the original or duplicate hereof as provided by the rules of said board of trade, under which the above-named deposit has been made.

——— ———, *Agent.*

Q. The blanks in the certificates which were issued then on your deposits were filled to show a deposit by you with the bank, whatever the bank was with which you made the deposit, on a contract or contracts between yourself, the depositor, and some person or persons with whom you made a trade for Mr. White?

A. Those are the facts.

Q. It appears from your evidence taken in the suit at law that, default having been made by non-delivery of the 100,000 bushels of wheat under the contracts in question, and a committee of the board of trade having been appointed to declare or determine what was an equitable measure of damages, that litigation ensued, drawing in question the legality or fairness of the award or decision of the committee, and that in the course of that litigation a bill was filed by you against the board of trade, but that the matter was specially litigated on a bill brought by A. M. Wright against the board of trade, which was made a test case. Now, will you please state at whose instance that bill was filed by you? I refer now to the
282 bill of Barber against the board of trade, which is made an exhibit in the preceding part of the testimony in this case.

A. At the instance of Mr. White.

Q. You can state how far you gave him an opportunity to make any contest which he chose to make as to the binding character of the contracts or the amount of damages which had to be paid on account of the default in fulfilling those contracts.

A. I know that Mr. White was notified of the result of the suit pending. I know that he was in my office on the last Saturday in March; that I told him I was very glad to see him; that the parties that I had trades with for him—these trades in question—were sending in their bills and threatening to have me suspended from the board did I not settle—pay them, and that I was very glad to see him to know what he wanted to do—was going to do. His reply was that he must fight them. I replied that that was very well if he would only do the fighting; that I did not care; that I could not be put off the board; and got up to go out, and said he was going home on that train; that he would leave them that night: and I asked him particularly before he went to see either General Stiles or to see his attorney, and to have him do something to keep me on the board, if he did not want I should keep this money,
283 and he went out leaving me with the understanding that he was going right to an attorney's office.

Q. Did he, in fact, protect you?

A. He did not.

Q. How far did you allow the matter to go before you paid the money over?

A. I allowed it to go until the last minute that I could without being expelled from the board. Complaints were filed against me. I was cited to appear before the board of directors at a certain date. I did so appear, made what defense I could, and was told very plainly that my defense was not good, and I then paid these parties.

Q. After the deposit of these monies as margins on account of contracts with the parties with whom you dealt on behalf of Mr. White, were those monies at any time under your control until you had made settlements with the various parties where dealings had been had?

A. They were not.

Q. How could they be liberated, if at all, after they had been deposited by you?

A. Only by the joint order of the party for whose security the money was deposited and my own order on them or by the president of the board of trade.

Q. If done by the president of the board of trade would that be in your interest, as you were the seller and damages were to be paid by you?

284 A. If I had not paid these parties the president of the board would then have endorsed them; the duplicates held by the parties with whom I had these trades made and the bank would have paid the money on those, and I could not have got it at all.

Q. Was that after the deposits were made that the matter passed beyond your control and you settled with them?

A. Yes, sir; I settled with them; I could not get the money.

Q. In point of fact, then, were these margins liberated so that you could control them?

A. I have not been able to control them yet.

Q. What was the nearest to your having any control over them at any time, the first thing that would have entitled you?

A. The first thing, *was* after I paid the parties with whom I had these trades for Mr. White- damages in full, was for me to take the original certificates which had been issued to me by the bank in question to the parties with whom I had these deals and have them endorse them, which they did; I endorsed them then and deposited them in the bank, but the bank refused to let me draw out the money.

Q. That is, you had to return the certificates to the bank, did you, or how was that?

A. Well, I did do so the minute they were endorsed by both. When they passed to my credit they ought to have paid my check against them; it simply went to my credit then—the money
285 did. There was no margin certificate out then; they had taken them, canceled them, and placed the money to my credit.

Q. Had the money been placed to your credit in the bank previously?

A. At the time I put up the certificates I handed in my check for the amount I wished to deposit at the various times; my check was

then charged up to me as it would be if any one else had deposited it. When I deposited these certificates, properly endorsed by myself and the parties with whom the trades were made, and whose names appeared on the face of the certificates with mine, they should have given me credit for them similar to any other deposit that I might make, and did so, at first refusing to accept them when I sent them over to the bank one morning—the next morning, I think it was, after they were endorsed—but afterwards, in the afternoon, taking them and passing them to my credit—passing the amount of the certificate- to my credit, as they would any other deposit.

Q. That was after all the proceeding- before the board of directors and the board of trade with reference to your suspension?

A. It was after that.

Q. And after you had paid the damages?

A. After I had paid the damages.

Q. According to what scale did you make the payment of those damages?

286 A. According to the award fixed by the committee of the board of trade.

Q. What price per bushel?

A. $1.35 per bushel.

Q. At whose instance did you make the contest as to the claim under that award of the committee—the claim of damages?

A. At the instance of Mr. White.

Q. Why was there delay, if you know, in enforcing the claim up to the time when those complaints were preferred against you before the board of directors?

A. As I understood it, it was the case of A. M. Wright *vs.* The Board of Trade, taken to the supreme court of this State to decide; which case was a similar case to ours.

Q. What would have been the consequence to you of suspension by the board of trade, in case you would have persisted to that extent?

A. I should have lost my membership at the board and my business that I make my living by.

Q. Can you state whether that is something that is valuable?

A. Membership on the board of trade was worth at that time, I think, between four and five thousand dollars.

Q. What is the initiation fee?

A. $10,000.

Counsel for defendant White objected to the question and answer as incompetent.

287 Q. You may state whether that would have secured to you the right to the margins if you had persisted in refusing to pay the monies complained of, the non-payment of which had been complained of before the board of directors.

A. It would not.

Q. You can state whether there was, within your information or knowledge, any defense whatever to the claims that were interposed on account of these contracts by the parties who complained against

you before the board of directors on account of the contracts you had made for Mr. White.

A. They had preferred charges against me and stated their case, and then I made my defense before the directors.

Q. Please state whether there was, within your information or knowledge, any real defense—actual defense; whether you had any good defense to make.

A. I had the defense that I had tendered red winter wheat on these contracts. I admitted the contracts, but that I had tendered red winter wheat to the parties and that they had refused to accept it.

Q. At whose instance did you make the tender?

A. I made the tender really at my own. Mr. White and I had previously talked about it, and it was left a little undecided whether we had better make that tender or not. In the forenoon of
288 the last day of July I heard that some of the members of the board were making tenders of red winter wheat on their contracts similar to these of mine. I tried to find Mr. White and see whether he wanted I should do it or not. I had but a short time to find him in and make the deliveries. I could not find it. I procured the wheat; made the tenders of it. Soon after I saw Mr. White, who seemed to be highly pleased with what I had done, approved of it all, and said the tenders were good, and that that would beat them.

Q. Will you please state a little more particularly the dealings which you had with the Bank of British North America covering the present account?

A. Well, at the time I opened an account with the Bank of British North America I drew a check on another bank and deposited it there, opened an account with them, a check for $21,500, I believe it was, and from time to time I procured these margin certificates from there and they were endorsed down as I deposited them, and I deposited other monies there—general bank accounts.

Q. The special margin certificates were issued by what bank?

A. The Merchants' Bank of Canada, I think, is the one that originally issued those.

Q. That bank turned its business over to the Bank of British North America?

A. They did. The Bank of British North America assured
289 me that they were responsible for the certificates that had been issued by the Merchants' Bank of Canada. They told me that I could notify all the parties who held the duplicates of the fact, and that they could bring them in if they chose and they would guarantee them, endorse them.

Counsel for defendant White objected to the answer on the ground that it is immaterial and hearsay.

Q. About how many certificates were there in respect to the $6,700?

A. About eleven.

Q. State whether those are certificates referred to in your answer in this case.

A. They were.

Q. State whether you had any personal interest in these sales by Mr. White other than by way of commissions on your part.

A. Not a cent.

Q. And as to the $11,412.50, how was that made up; whether of moneys advanced by Mr. White or partly profits made by him in the course of dealings through you; can you tell how that was?

A. It would be hard to tell; it was a general account, and that was the amount returned. The account was made up originally from profits—monies—and this was the balance of account that I retained for protection on the deal in question.

Q. You may state whether there were dealings by you for him on the board of trade after the time for delivering the 100,000
290 bushels of wheat in question.

A. There were such transactions.

Q. What was the result of those dealings?

A. On some of them he made a profit, on others a loss.

Q. Is there any exhibit you can refer to as indicating how it was?

A. I should say this was it—Exhibit G.

Q. Exhibit G introduced by Mr. White in his testimony here?

A. Yes, sir.

Counsel for defendant White objected to the three last questions and answers, and either of them, because each is incompetent and immaterial.

Q. How far were those dealings, outside of the sale of 100,000 bushels, carried on while the sale of 100,000 bushels of No. 2 spring wheat was pending?

A. He was trading back and forth all the time, during that time, more or less; along towards the last of it; in July not as much, I should say.

Counsel for defendant White objected to the last question and answer as immaterial.

Q. What were the orders to you by Mr. White as to the sales of the 100,000 bushels, and how were they given?

A. They were given verbally to me by Mr. White, sometimes by Mr. Maltman, and in the majority of cases by telegram from him.

291 Q. Will you produce the telegrams received by you from him in April, May, and June and July, 1882, and also telegrams received in September and October, 1882, from said White?

A. I have those telegrams, 23 in number, including one to Gregg, Son & Co., and one to A. S. Maltman.

(Telegrams were marked Exhibits 1 to 23.)

EXHIBIT 1.

DATED FT. WAYNE, IND., *Oct.* 27, 1882.

292 To G. M. Barber, board trade:

Cover the pork.

J. B. WHITE.

EXHIBIT 2.

DATED FT. WAYNE, IND., *Oct.* 23, 1882.

To G. M. Barber, board trade:

Sell twenty year corn.

J. B. WHITE.

EXHIBIT 3.

DATED FT. WAYNE, IND., *Sept.* 11, 1882.

To G. M. Barber, board trade:

Take in Septe'r corn & resell it one cent advance.

J. B. WHITE.

EXHIBIT 4.

DATED FT. WAYNE, IND., *Sept.* 11, 1882.

To G. M. Barber, board trade:

Cover the oats & resell twenty at one cent advance.

J. B. WHITE.

EXHIBIT 5.

DATED FT. WAYNE, IND., 9–1, 1882.

To G. M. Barber, board of trade:

Sell forty thousand October oats.

J. B. WHITE.

EXHIBIT 6.

DATED FT. WAYNE, IND., *July* 29, 1882.

To G. M. Barber, board trade:

If July wheat touches dollar nineteen cover the whole deal.

J. B. WHITE.

293 EXHIBIT 7.

DATED VALPARAISO, IND., *June* 9, 1882.

To A. S. Maltman, 116 South Water St.:

Been delayed three hours; arrive Chicago eleven o'clock with exchange; tell Barber.

J. B. WHITE.

EXHIBIT 8.

DATED FORT WAYNE, IND., *May* 27, 1882.

To G. M. Barber, care Gregg, Son & Co.:

Buy at opening ten Aug. wheat and sell ten July.

J. B. WHITE.

EXHIBIT 9.

DATED FORT WAYNE, IND., *May* 26, 1882.

To George M. Barber, board trade:

Cancel any orders that you have to buy or sell for the present.

J. B. WHITE.

EXHIBIT 10.

DATED FORT WAYNE, IND., *May* 26, 1882.

To G. M. Barber, care Gregg, Son & Co.:

Purchase forty thousand July wh't twenty-four & resell it four & three-quarters.

J. B. WHITE.

EXHIBIT 11.

DATED FORT WAYNE, IND., *May* 26, 1882.

To Gregg, Son & Co., for G. M. Barber, b'd. trade:

Sell on call twenty July wheat.

J. B. WHITE.

294 EXHIBIT 12.

DATED FT. WAYNE, IND., *May* 20, 1882.

To G. M. Barber, b'd trade:

Cover corn at seventy-one; last fifty wheat twenty-three.

J. B. WHITE.

EXHIBIT 13.

DATED FT. WAYNE, IND., *May 19th*, 1882.

To G. M. Barber, b'd of trade:

If July touches twenty-three cover the last thirty.

J. B. WHITE.

EXHIBIT 14.

DATED FORT WAYNE, IND., *May* 18, 1882.

To G. M. Barber, b'd of trade:

Sell ten July wheat; ten July oats.

J. B. WHITE.

EXHIBIT 15.

DATED FT. WAYNE, IND., *May* 17, 1882.

To G. M. Barber, b'd trade:

Sell twenty July. J. B. WHITE.

EXHIBIT 16.

DATED FT. WAYNE, IND., *May* 15, 1882.

To G. M. Barber, board trade:

Sell at opening thirty July wheat.

J. B. WHITE.

EXHIBIT 17.

DATED FT. WAYNE, IND., *May* 6, 1882.

295 To G. M. Barber, board trade:

If market touches six & three-quarters cover fifty, & reacts to eight & half resell it again.

J. B. WHITE.

EXHIBIT 18.

DATED FT. WAYNE, IND., *May* 6, 1882.

To G. M. Barber, b'd trade:

Cover the other twenty & resell it half cent advance, & twenty more one cent advance.

J. B. WHITE.

EXHIBIT 19.

DATED FORT WAYNE, IND., *May* 4, 1882.

To G. M. Barber, board of trade:

Sell or call twenty July wheat.

J. B. WHITE.

EXHIBIT 20.

DATED FT. WAYNE, IND., *May* 1, 1882.

To G. M. Barber, board of trade:

Sell twenty July wheat at opening

J. B. WHITE.

EXHIBIT 21.

DATED FT. WAYNE, IND., *April* 27, 1882.

To G. M. Barber, board of trade:

Sell ten July wheat at opening.

J. B. WHITE.

EXHIBIT 22.

DATED WASHINGTON, D. C., *Ap'l* 22, 1882.

296 To G. M. Barber, board of trade, Chicago:

Sell ten July wheat at opening; telegraph National Hotel here.

J. B. WHITE.

EXHIBIT 23.

DATED WASHINGTON, D. C., *Ap'l* 19, 1882.

To G. M. Barber, board trade:

Sell ten July wheat; will be home on Saturday.

J. B. WHITE.

Q. What did you understand to be the selling price of number two spring wheat on the board of trade in the city of Chicago on the 31st of July, 1882, at the close of the market?

A. $1.36 per bushel.

Q. What amount, if any, was claimed by persons to whom you had sold this 100,000 bushels of number 2 spring wheat as being the market price at the close of the market that day?

A. $1.36 per bushel at that time, right within a day or two afterwards, before the committee fixed their price.

Q. What did those parties do with reference to claiming damages from you for the non-fulfillment of these contracts?

Counsel for defendant White objected to question as having been already stated and as immaterial.

A. They sent me in bills for amount of damages claimed, being the difference between the price at which I had this wheat
297 sold to them and the market price on the board of trade the last day of July, $1.36.

Q. Then in the course of events what occurred next in regard to those contracts?

A. Do you mean as between me and the parties?

Q. Yes, sir.

A. Well, after the committee of the board fixed the price of wheat at $1.35 they sent in new bills to that amount, $1.35 instead of $1.36.

Q. When did the commencement of the proceeding in chancery begin?

A. After the committee had fixed the price of wheat—very soon after that.

Q. In your answer in this case you have spoken of the business between you and complainant, The Bank of British North America, having been commenced by your making a deposit of a certain amount; and you state that subsequently from time to time margin certificates and duplicates thereof were procured from the bank by you. Did you mean to say that those certificates were procured from that bank? What was your meaning there?

A. That was just my meaning; that I procured certificates from that bank to protect various trades on the board. My impression is that all the certificates in question were originally issued by the Merchants' Bank of Canada.

Q. And not by the Bank of British North America?

A. Yes, sir.

Q. And the certificates issued by the Bank of British North
298 America were issued how—upon what trades?

A. On trades made there subsequently to the time these margins were put up.

Q. On account of the 100.000 bushels sold July, 1882?

A. There was none put up with the Bank of British North America on account of this 100,000 bushels, but the Bank of British North America had guaranteed the certificates which had previously been issued by the Merchants' Bank of Canada to secure these certificates made for Mr. White with other trades.

Q. Then when you made settlement by paying the damages according to the award of the committee the certificates that had been issued by the Merchants' Bank were honored by the Bank of British North America?

A. They were after they were endorsed by the parties.

Q. And the amount of money was deposited by you in that bank to your credit?

A. It was.

Q. Whose moneys were they which were first deposited and for

which certificates were issued on account of the sales of the 100,000 bushels?

A. My money.

Q. When those certificates were endorsed by yourself and the party to secure whom they were issued and the money was credited, you may state whether it was subject to any conditions of
299 payment as between you and the bank, and, if so, what the conditions were.

A. No conditions whatever at that time. They took the certificates and placed them to my credit.

Q. It would be necessary, however, for you to have drawn a check for the money?

A. Certainly.

Q. You can state whether you ever withheld from Mr. White any information sought for by him and proper to be communicated, so far as you know, in reference to the form or nature of the contracts which you made in his behalf on the board of trade?

A. Never the first particle; on the contrary, I had always, from Mr. White's conversations with me, understood he wanted I should lose nothing; that he would pay all the expenses of the suit, and that I had done everything entirely satisfactory. It was my wish to help him in every way I could; of course, I believed at the time he meant just what he told me.

Q. Why did you make the tender of wheat the last of July, 1882?

Counsel for defendant White objected to the question as being immaterial and as involving a transaction by Mr. Barber himself for his own purposes.

A. Thinking it might be to Mr. White's interest for me to do so.

Q. Please state whether there was, within your knowledge, any infirmity in the contracts or any illegality in them or in any of them.

300 Counsel for defendant White objected to the question because it is immaterial and because it calls for the opinion of the witness.

A. I have always considered them strictly legal and binding. There was no illegality in any of them.

Counsel for defendant White objected to the opinion of the witness expressed in the last answer as incompetent.

Q. State whether Mr. White ever communicated to you any opinion on his part that those contracts were illegal or subject to any infirmity whatever.

A. None whatever. On the contrary, he has told me he considered them good contracts in law, and that he could enforce claim for damages against the parties that I had made those contracts with.

Q. When you went to see Mr. Burke, the lawyer who filed the bill in chancery, you can state whether you found him ready with documents printed or otherwise, or how that was.

A. I first went to see him at the request of Mr. Maltman, who informed me that Mr. White had made arrangements with Mr. Burke, and wished me to go up to Mr. Burke's office at once and sign the papers; that the trades were in my name, and it was necessary for me to sign some papers, which were al- ready for me at Mr. Burke's office, and that Mr. White was going to meet all the
301 expense of the suit, and he would have it in his name; only the trades had been made in my name; he had to use it; he disliked to put me to the inconvenience of using my own name in the suit. I went to Mr. Burke's office immediately, and there found a paper either entirely ready or nearly so, which was the bill in chancery—a few little words to put in here and there to complete it.

Counsel for defendant White objected to the last answer because it is hearsay and because it is immaterial.

Cross-examination by Mr. NINDE:

Q. You may state the dates and amounts of cash receipts from Mr. White that were remitted to you to carry these trades for the 100,000 bushels of wheat in controversy.

A. It would be impossible for me to give you those amounts here, as I have not my books here.

Q. I will ask you to state whether you did not get a draft or a check from Mr. Maltman for $2,000 on the 23rd of May, and whether you did not receive from Mr. White $2,000 on the 3rd of June, $1,000 on the 7th of June, and $5,000 on the 12th of June, $3,000 on the 3rd of July, cash, and whether all of these sums, whether received by you through Mr. Maltman or direct from Mr. White, were not on Mr. White's account and placed in your hands to use as margins on the 100,000 bushels of wheat in controversy.

A. Yes, sir; I received the money as stated. It was not
302 all to be applied to protect me on the wheat. The 100,000 bushels of wheat I had sold for him, principally that, but some on other trades that I had for him at the time. In other words, it was security for all the open trades I had for him.

Q. You may state where these various amounts that I have named in the last question were deposited when you received them.

A. I cannot state that; I kept two bank accounts; I deposited it in one or the other of the banks; I should presume that I did; some in one and some in the other.

Q. Where were your two accounts kept?

A. At that time I kept an account with the Merchants' Bank of Canada and with the Corn Exchange Bank, both of this city.

Q. Have you the means of determining in which bank these sums were deposited?

A. I can hardly state whether I could find that out or not; I might or I might not. It would go in with other deposits.

Q. The fact that you took out certificates from the Merchants' Bank of Canada to protect these deals—you may state whether such a fact would indicate to you whether these deposits of White's were not kept in that bank.

A. Not in the slightest. If I had more money in one bank than the other I would be just as likely to go to one as the other. As quick as I received drafts of money from Mr. White or any one else and gave him credit for it, or them credit for it, I certainly
303 considered it was my money, to be deposited in either bank or kept in my pocket or anywhere else, and when I was asked to put up margins on trades made by me on the board of trade for Mr. White, for myself, or for any one else I should put them up in any bank where I had money and wanted to.

Q. Do you mean to say that the certificates that were used for margins on the wheat in controversy, issued by the Merchants' Bank of Canada to the amount of $6,700, were issued upon your own funds in which Mr. White had no interest or issued upon White's money?

A. My own money. As I stated in my previous answer to the previous question I consider it my money I have in bank subject to my credit.

Q. These certificates that are named in your answer in this cause involving $6,700, were they issued by the Merchants' Bank of Canada or by the bank of British North America?

A. My impression is they were all—I am very sure they were all—issued by the Merchants' Bank of Canada.

Q. When issued and in the hands of yourself, and the duplicates in the hands of yourself and the parties with whom you dealt, and the present complainant succeeded said bank of Canada, you may state whether the certificates were returned to the bank of
304 Canada, and you gave your check upon that bank, and the complainant reissued these certificates, or whether the money was transferred from the Merchants' Bank of Canada to the complainant without check, and that upon that basis the complainant guaranteed the certificates already issued. How was it managed when that bank went to retire, what was done with the certificates and what done with the deposits?

A. The manager of the Bank of Canada told me that the Bank of British North America would be responsible for them. I simply held them until the following April, the time I paid the parties. Then I took them to the Bank of British North America and deposited them as any check or draft.

Q. How did the money get from the bank of Canada to the complainant—upon your check thereon in favor of the complainant or without your co-operation?

A. I don't know how it got there—not by my check.

Q. Was it your understanding that your deposit with the Merchants' Bank of Canada had passed by an arrangement between the two banks to the Bank of British North America?

A. It was my understanding that the money which I had originally deposited with the Merchants' Bank of Canada at the time they issued these certificates had so passed.

Q. You don't undertake to say, do you, that the moneys belonging to Mr. White and credited to him in Exhibit "G," here-
305 tofore attached to Mr. White's deposition, were not part of the

$21,000 you had on deposit with said Merchants' Bank of Canada or the plaintiff, do you?

A. I could not state.

Q. You may state whether these moneys were not advanced to you with which to trade for Mr. White on the board of trade.

A. They were advanced to protect trades that I had made or should make for Mr. White on the board of trade.

Q. As I understand you to say, so far as the 100,000 bushels in controversy are concerned, you cannot say whether one dollar of White's money had been used for the purpose of making or protecting said trades. Is this not correct?

A. Indirectly I should say I had used his money, as I had given him credit for the money he sent and considered the money my own, and then used it to protect the trades. I cannot state that one of the identical dollars received from Mr. White were used in protecting the trades.

Q. On the other hand, are you able to say that all of the money advanced by him to you did not go into your deposit with the Merchants' Bank of Canada, and upon which deposits these certificates were based?

A. I am unable to state positively in which bank these various sums of money were deposited by me, but I am very sure all of it did not go there.

306 Q. What portion, in your judgment, went there?

A. I cannot remember two years ago to tell anything about it.

Q. At what interview with Mr. White did he say to you that he thought said contracts were good?

A. I am unable to locate the exact time. It was after the default had been made on the 31st day of July.

Q. You have stated, as I understand your testimony, that in your judgment said contracts in which you sold the wheat in controversy were valid contracts. I will ask you to state whether that opinion was expressed by you upon the ground that there was an honest agreement between you and the purchasers that the wheat should actually be furnished by White and delivered to them, or whether that opinion rests upon the theory that the form of the contract was not a put or a call, but in form provided for the sale and delivery.

Counsel for defendant Barber objected to the question as an unfair question.

A. It was not in consequence of any agreement or understanding with the parties with whom I had sold the wheat that Mr. White should furnish it certainly, as the parties did not know Mr. White at all. Mr. White did not want any one to know him, as so testified in his evidence. The parties to whom White sold wheat only knew me in the transaction, so I could not have

307 formed the conclusion which I did from any talk with them about Mr. White furnishing any wheat. I came to the conclusion that they were legal from the facts that I had known of de-

cisions by the court that such transactions were legal, that it certainly was my intention—that it was a straight legal trade, the parties to whom I sold the wheat so testified in court that it was. There are various other reasons that I believe they were legal contracts.

Q. What influence did it have on your mind in reaching that conclusion expressed by you, that the contracts were not in form what are known as puts and calls, but regular contracts for sale in form.

A. I have known for some time that contracts in the nature of a put or call were not legal and not recognized by the laws of this State, but that the others were.

Q. Then your opinion was formed upon the form of the contract rather than upon the fact that there was any expectation on your part at the time that the wheat would be furnished by Mr. White or yourself to deliver to the purchaser.

A. There certainly was an expectation that the wheat would be delivered or that he might possibly do what he did do, default on it and pay the damages. I did not suppose that Mr. White would buy the wheat in Indiana or anywhere else. He would buy the wheat or authorize me to buy it on the board of trade, which
308 is the place I, of course, supposed he would buy it—where he did buy it—to fulfill his contract.

Q. When wheat is bought on the spot and delivered on the spot, you may state how it is managed, as to whether the payment is also on the spot.

A. No, sir.

Q. Explain fully how that is done.

A. Well, as I understand your question, bought on the spot, if I buy cash wheat on the board of trade I do not pay for it the instant I buy it. According to the rules of the board, if I buy it this afternoon the wheat would have to be delivered to me before eleven o'clock to-morrow morning. I should pay for it when it was delivered, not when it was bought.

Q. Then, purchases of actual cash wheat are paid for in actual cash at the time the wheat is delivered, are they?

A. Usually by checks, which is equivalent to cash.

Q. Do I understand you to say that you made these sales of 100,000 bushels to be delivered on the 31st of July, 1882; that it was your expectation that the wheat should be delivered?

A. It was, unless we arranged with the parties differently. I considered that I had legal contracts with them to deliver the wheat; if afterwards I saw them and canceled the contract that I had made with them that might be done; but that I had got to deliver the wheat, unless I had made subsequent arrangements with them, or pay damages.

309 Q. Do you mean to say that by means of your relation to and authority from White you were authorized on his behalf, but in your own name, to make an agreement to actually deliver to anybody the 100,000 bushels of actual wheat?

Counsel for defendant Barber objected to the question on the

ground that the power to sell embraced the power to deliver in the absence of anything further being done by Mr. White to carry out his contracts.

A. Not unless he ordered me to do so, as by so doing — would close the trades; of course I should not do it without orders.

Q. My question is as to the authority that you had to make a contract binding yourself and him, as your principal, to actually deliver 100,000 bushels of wheat.

A. I certainly supposed I had the authority *I had the authority* to sell that wheat for him.

Q. Did you not know from what he said to you and from the fact that no wheat had been delivered during your transactions with him on his behalf that it was neither his desire or intention to sell wheat and actually deliver the same in liquidation of the contract?

Counsel for defendant Barber objected to the question as containing an unauthorized inference.

310 A. I did not expect Mr. White to deliver the wheat, but I did expect to deliver it for him; that if he bought the wheat on the market it would be delivered to me; that I could deliver it to the parties to whom I sold it—that is, if I put it on the market for him. I have received grain here that had been bought from Mr. White and delivered it where I had it sold, and he knew nothing about it. Mr. White understood perfectly well that that is part of the way a commission man earns his commissions; where he buys and sells as quick as that it is done; the difference in those two prices we would give the customer, and that the commission man *that* has to see to the delivery. He may have to take all that stuff and pay for it and deliver it to the other parties and get his pay back again and the customer know nothing about it.

Q. Do you state that when you made these contracts you expected to advance the value of the 100,000 bushels of wheat for Mr. White and deliver it upon the contracts?

A. It was one of the things I might have to do and I might not. After he had bought in that wheat, authorized me to buy it in, I could make arrangements with the parties that I had it bought from to deliver it for me to the parties that I had it sold to. In such a case I would not have to receive it myself.

311 Q. Is it not true, Mr. Barber, that you well understood during all these transactions that Mr. White's purpose of trading on the board and giving you authority to act for him was to take the chances of either receiving or having to pay the margins upon the dues contracts entered into for him?

Counsel for Defendant Barber objected to the question on the ground that what was said between the parties in regard to the contract must govern.

A. It was my understanding that he was not to advance the money to pay for any of the stuff, but that I would do it for him, and not the understanding that it was a matter to be settled with differences at all between me and the members of the board. As between me

and Mr. White, if I bought it at one price and sold it at another, if there was a profit for him he received credit for that profit; if there was a loss he was debited with that loss; from that time on he knew nothing more about it. It is the custom on the board of trade.

Q. Then, so far as he was concerned, you say he had no relations to the transactions further than to receive or pay the differences?

Counsel for Defendant Barber objected to the question as not being a proper construction.

A. I should think my previous answer had answered that just as well as I could.

Q. The last question was asked for the purpose of identical understanding in the matter, that there may be no misconception as to the meaning. Please answer it.

312 A. I say that if he bought in grain and sold it, that when that grain was delivered to me I would deliver it to the parties, but if he bought it first, he would — sold it. I would then place his profit the difference between the price at which I had it sold, if the selling price was higher than the buying, to his credit, and after that I would see to the delivery of the grain myself for him for the commission that I charged him for doing the business.

Q. Do you mean to say that in consideration of the commission that you charged him you were to make the contracts and furnish the grain for delivery that was sold, and receive and care for the grain delivered to you for him that was purchased? If not, what do you mean?

Counsel for defendant Barber objected to the question on the ground that the matter has been all gone over.

A. I mean that I was to receive the grain that I had bought for his account and deliver it where I had sold it for his account.

Q. Do you also mean that he had nothing to do with the receipt or delivery of such grain?

A. I mean to say that I attended to that for him without troubling him. I did not deliver it unless he had already bought it so that I could deliver it. I did not deliver it in the case of this 100,000 bushels, because he had not bought it and could not deliver it.

Q. Then you were not by the terms of the agreement be-

313 tween you and him to deliver grain that was sold on his behalf unless he furnished it?

A. Unless he authorized me to buy the grain for him. I did not expect he would furnish the grain from the country where he sold 100,000 bushels; I expected he would authorize me to buy it on the board of trade as every one else does that trades there.

Q. The very purchase on his behalf for the purpose of fulfilling a contract of sale was only a formal matter for the purpose of reaching the differences, wasn't it?

A. Not by any means.

Q. He furnished you no money to pay for the wheat when purchased, nor where you sold did he furnish you any money to pay for the wheat or fill the contracts, did he?

A. No, sir.

Q. There never was such a thing transpired between you as a purchaser on his part for cash to obtain wheat to deliver on a contract, was there?

A. He has purchased wheat to close, to deliver on sales that I had previously made. I should say that I had purchased wheat for him by his orders to deliver on sales made for him.

Q. The question I asked you is whether there is any actual cash paid by him for wheat to get the commodity to deliver on contracts you ever made for him?

314 A. I have answered that question previously by stating that when he had wheat bought I had wheat bought on the board for him and it came to me; I would pay and I would not ask him for the money; that I would immediately get the money back again from the party I had sold to.

Q. So far as he was concerned his money was not used for the actual purchase and payment of any grain?

A. He never furnished me money to pay for it, but understood that I was to furnish money, as I had told him repeatedly.

Q. Then if that was the understanding why didn't you furnish the money to purchase the wheat to fulfill these contracts?

A. Because Mr. White expressly forbid me from buying the wheat. He was here the last of July and forbid it and said I must default on it, leave it to the committee to fix the price, and he would stand the award of the committee.

Q. Do you pretend to say that you had cash enough on hand that day to buy 100,000 bushels of wheat at $1.35 a bu.—$135,000, to fill this contract of White?

Counsel for defendant Barber objected to the question on the ground that witness was questioned on that subject in the trial before the jury.

A. I don't pretend to say that I had $135,000 to my credit in bank, but I do pretend to say that if Mr. White had instructed me to buy that wheat, and it had been delivered to me, that I

315 should have paid for the wheat by what money I had and credits at the banks without any trouble.

Q. And, if he had not interfered, that you would have taken such course and invested said money and credit, although in the past you had never made such a transaction?

Counsel for defendant Barber objected to the question as being an improper presentation of the subject.

A. He never defaulted previously.

Q. And in view of the fact that he had never defaulted, but had always before that time settled by paying the differences?

A. Had Mr. White not forbid me purchasing the wheat I should most assuredly have done so and filled his contracts of sale of this 100,000.

Q. Did you not know that he was so situated in his business of life and in his purposes in trading upon the board that he had no

intention of incurring $135,000 of liabilities to you, or in any other way to purchase that property to be delivered?

A. I did not understand anything of the kind. Mr. White always gave me to understand that he was a man of quite large means; could raise any amount of money that was wanted.

Q. Granting that all to be true, he lives in Indiana, 150 miles distant from you, where his estate is. Do you mean to say that you would have advanced him, without negotiation with him or without consultation, if you had been let alone and not interfered
316 with, $135,000 in his interests here?

A. It would not have been advancing it to him; I should have bought that much wheat and delivered it and got my money back, less the difference in the price which I had it sold for for him and the price that I paid for the wheat to deliver.

Q. Then the whole thing amounts to this, that instead of buying the wheat and paying for it and holding it for him and delivering it for him you simply would have turned yourself upon the board and adjusted it in the shape of differences?

A. No, sir; I should have bought the wheat; I should not have gone to one of the parties that I had the trade with and negotiated with them to settle in differences; I should have gone right on the market and bought the wheat.

Q. Then so far as he is concerned it would have been a pure question of difference, and that is what would have been charged to him rather than the actual $135,000 advanced?

A. Of course he would have the loss of the difference of what I sold it at and what I bought it for him.

Q. Then, as respects Mr. White, it was at last a pure transaction on his part of deals in differences and of responsibilities for the discrepancies?

Counsel for defendant Barber objected to the question as an inference.

317 A. I think I have answered that so many times by telling the whole arrangement that I had with Mr. White was that he should not pay for the wheat and advance the money himself, but that I did it for him.

Q. And that your charge against him was for the difference rather than for the price?

A. I could not charge him up the price. It would amount to the same thing if I charged him with the money, and then credited him with another amount of money and make the two entries while one would do it—it would amount to the same thing.

Q. How much trading had you done for Mr. White besides this 100,000 bushels in controversy?

A. I have not the slightest idea, further than what Mr. White has given me by stating somewhere in the neighborhood of three million of dollars, I think he has testified.

Q. During all these dealings, as I understand you, Mr. White never himself received or delivered any wheat, oats, corn, or pork in said transactions?

A. It was not his place to personally —; I was to do it for him.

Q. And were not all the statements you ever rendered White of these three millions of dollars of transactions rendered in differences instead of in the price you paid for wheat or other commodities or the price you got for them.

Counsel for defendant Barber objected to the question on the ground that the accounts speak for themselves.

318 A. I cannot go back four years and tell from memory about the statements that I have made out.

Q. What is the best recollection of the course of transactions between you and him in that behalf?

A. Well, I should presume that he was debited with the differences between the price—debited with the differences, provided he lost money in the transaction, or credited if he made money—sold it for higher than he paid. All those transactions were exactly the same. The statements would show them exactly the same, providing this 100,000 bushels of wheat had been by me purchased at the board by Mr. White's order to cover his sales and delivered to them; certainly wheat would have passed in that case, and the statement- would appear just as they always do. I should not charge him with the amount of money that I had paid out and credit him with what I had received. It would be the difference in the two amounts I would debit him with if it was his loss, if I had paid out a larger amount.

Q. As to the tender of number two red winter wheat, you may state whether you did not advise Mr. White that that was a good liquidation of the contract, in your opinion.

A. No, sir; we talked about it, and he sometimes was very strong that it would be a good tender. It was my idea always that
319 it was not a legal tender on the trades which I made, but that it possibly might be so construed by the courts, and consequently we would try it.

Q. You spoke something, in your testimony on the trial of the case at law, about shifting trades or adjusting them in some way by transfers?

A. Yes, sir.

Q. Please explain how that is accomplished.

A. If I had it sold to one man and he asked me to put it down to another I would do so in place of him to relieve the original man.

Q. If you had bought of this second party how would you then manage? Suppose you had sold to these other parties, and the sale came around to the second party, and you had bought of him, whether you would adjust one against the other?

A. I would have wheat then sold to the second party instead of the first party. The first party would be out entirely. I would have it sold to the new party.

Q. Suppose the new party happened to be one of whom you had purchased the same day?

A. Of course, in that case I should pay or receive the difference in the price, as it would make a direct settlement and cancel the

contract made, one contract to sell and one to buy on account of the same party, and, rather *to* wait until the time for delivery came by taking the wheat to him and him taking it back to me, whatever difference there was in the price in that case would pay to
320 either.

Q. What proportion of White's trades were managed in that way?

A. I have no idea—a small proportion.

Q. Were any of the 100,000 bushels in controversy affected by any of these sort?

A. My impression is there were two or three 5,000-bushel lots that were transferred from the original parties, to the best of my memory.

Q. That is, you had sold it to one party, and upon an agreement between him and you and the third party the third party becomes the purchaser?

A. Yes, sir.

Q. What is your best recollection as to whether 10,000 or 15,000 were of this kind?

A. I really cannot state; I know it is a very small proportion of it; it might be ten or fifteen or possibly twenty thousand.

Redirect ex'n — Mr. DENT:

Q. Such transfers are provided for by the rules of the board of trade, are they not?

A. Yes, sir.

Q. The effect of them is that deliveries as between several parties on different trades may be reduced in number, is it not?

A. That is the fact.

Q. You would have a customer after the transfer for the same amount of wheat and there might be a slight variance in the price, that variance being settled by a sort of exchange, clearing-house arrangement?
321 A. Those are the facts.

Q. Speaking now of the contracts for the 100,000 bushels of wheat to be delivered in July, 1882, I will ask you whether or not it was the legal right or the right of Mr. White to buy that wheat in any market he chose and have it delivered on the contracts here?

Counsel for defendant White objected to the question, because it calls for a conclusion rather than the facts.

A. It was certainly his right to do so, and I should have been very glad to have had him done so.

Q. When he gave you directions, as I understand he did, to sell the wheat in different lots—5,000, 10,000 bushels, as the case might be—had you any right before the time for delivery arose, provided there was no default on his part as to keeping margins good, to close the contract by payment of differences?

Counsel for defendant White objected to the question, because it calls for an expression of opinion and not for the facts of the case.

A. None whatever.

Q. When Mr. White gave you those directions to sell the wheat you can state whether there was any direction by him to the effect that the sales should only be formal and should not be carried out.

A. None whatever. It was a straight, explicit order to sell the wheat, as the telegrams will show.

Q. Did you or not understand it to be your duty to make
322 absolute and binding sales in his behalf upon those orders?

Counsel for defendant White objects to said question, because it calls for the witness'*es* understanding.

A. I did.

Q. Please state whether you did make absolute and binding sales.

A. I did.

Q. Please state whether they were in any manner fictitious or unreal.

A. Not in the least.

Q. Please state whether Mr. White ever claimed or pretended that they were fictitious or unreal or asked to have them treated as being fictitious or unreal?

A. I never knew that he claimed it until he commenced this suit.

(Endorsed:) Filed May 29, 1884. Wm. H. Bradley, clerk.

323 *Bill of Interpleader.*

THE BANK OF BRITISH NORTH AMERICA
vs.
JAMES B. WHITE & GEORGE M. BARBER. } In Chancery.

JAMES B. WHITE, called and sworn in his own behalf May 26, 1884, and examined by his counsel, LINDLEY M. NINDE, Esq.

Mr. NINDE:

Q. What is your name?

A. James B. White.

Q. Are you the James B. White that is defendant to the case of the Bank of British North America against James B. White and George M. Barber, pending in the United States circuit court for the northern district of Illinois?

A. Yes, sir.

Q. State upon what basis, so far as you know, your codefendant, Mr. George M. Barber, claims to hold $6,700, advanced by you to him, and for what purpose. State fully the whole history of the transaction as to this controversy about the $6,700.

Counsel for defendant Barber objected to the interrogatory as calling for the witness'*es* conclusions, rather than for any statements made by Mr. Barber.

(The following was added to last question by counsel for Mr. White:)

Q. I will add to the foregoing question this: State the basis of the

information called for, whether from interviews with Mr.
324 Barber or from what source your knowledge of the facts originated.

A. I would state that in the year 1882, either the month of August, September, or October—I could not locate the month; it was either August or September—I was in Chicago; it was in the year 1882; I came up to see Mr. Barber, and he was absent from the city. I found his clerk in the office—the clerk's name is B. C. Bannister—and I told him that I had come up to see what was about being done in the July deal, and where the money was deposited that Mr. Barber had put up against the deal. He told me that he could tell me where the money was; it was in the Bank of British North America; that it had been put there—transferred from the Merchants' Bank of Canada to that bank—and that he gave me enumerations of the parties from the books—from Mr. Barber's books—and the names of the parties that the deals were made with and the amounts deposited. Against those separate deals one name of a firm was Foss, Bailey & Co., which he stated there was 5,000 bushels of wheat sold to them at $1.28\frac{3}{4}$; that there was no money put up against that deal; and on May 9th there was 5,000 bushels sold to C. E. Foss at $1.22\frac{7}{8}$, and 5,000 bushels more to C. E. Foss, the same date, at $1.22\frac{3}{8}$,
and stated to me that there was $1,500 of my money put on
325 these deals to Foss, and also stated that Foss and Bailey both represented one firm—that is, the first 5,000 of Foss and Bailey and C. E. Foss represented one firm. Then, on May 17th, he sold 10,000 bushels to Pickering & Co. at $1.24\frac{1}{8}$ and $1.24\frac{1}{4}$, and that there was $2,250 of my money up on that deal in the bank. He showed me the entries in the book, and I put them down as he read them off to me. We both sit at the same desk, just as we are doing here, at a table like this; and on May 17th he sold to Urich Busch & Co. 5,000 bushels of wheat at $1.24\frac{3}{8}$, and that there was $750 of my money on that deal put up in the bank; and on May 24th he had sold 5,000 bushels — $1.25\frac{5}{8}$ to A. H. Blist. There was no money on that deal; and on May 25th sold to A. M. Henderson 5,000 bushels at $1.25\frac{3}{8}$. There was no money on that deal put up; and on May 25th he sold to Kriegh & Davies and transferred the bill; he sold to F. D. Hinckley 5,000 bushels at $1.25\frac{5}{8}$, and there was $500 of my money up on that deal; and on May 25th again he said he sold to J. B. Hobbs & Co. 5,000 bushels, but that was settled at $1.25\frac{7}{8}$, and another 5,000 at $1.25\frac{7}{8}$; both of them were settled. I suppose he means by that that they were secured, or turned off, or something. To Gregg, Son & Co., on
May 25th, he sold 10,000 bushels at $1.23\frac{7}{8}$, and to the same
326 firm, Gregg, Son & Co., he sold another 10,000 bushels at $1.23\frac{5}{8}$. There was no money put up on these deals; that on May 31st he sold to Hallam & Applegate 5,000 bushels at $1.25\frac{5}{8}$. There was no money up on that deal; and to John Crighton & Co., May 31st, 5,000 bushels he sold at $1.25, and put up $500 of my money on that deal. Then sold, on May 31st, to F. G. Logan & Co., 5,000 bushels at $1.25, and stated there was $500 of my money on that deal. Then, on May 31st again, he sold to

H. G. Gaylord 5,000 bushels at $1.25⅛, and there was $500 of my money put up to protect that deal. Then, on May 15th, he sold A. H. Bliss 5,000 bushels at $1.23½. There was no money on that deal. Then, on June 6th, he sold to Gregg, Son & Co. 5,000 bushels at $1.28½, and there was no money on that deal; and on June 3rd he sold to Robert Lindblom & Co. 5,000 bushels at $1.25⅞, and had put $400 of my money up on that deal, and the balance of my money he said Mr. Barber had.

Q. You may state whether he showed you Mr. Barber's books and whether the books showed in reference to these various items of money; where it was put, and for what purpose, etc.

A. Yes, sir; he showed me the books, and I copied them off while he read them off to me, sitting alongside of each other.

327 Q. You may state what the entries showed as to where the money was deposited that had — put up to protect these various deals, and what they showed as to the various amounts you have named, being amounts put up to protect these various deals.

A. Well, the money had in the first place been placed—he stated they had been in the Merchants' Bank of Canada, and they had quit business — the Merchants' Bank of Canada and had transferred those monies to the Bank of British North America, and that is where they *were* now.

Q. The question I ask you now is what the entries on Mr. Barber's books showed as to where your money was placed to protect these various deals?

Counsel for defendant Barber objected to the question on the ground that the books are the best evidence of their contents.

A. I cannot say as to what the books stated as to that. He read to me—that is, what it stated. He told me that is where it was; whether the books read it or not I cannot remember; but that he told me, and I put it down afterwards in conformity with his statement, transferred from the Merchants' Bank of Canada to the Bank of British North America.

Q. You may state what the books showed as to where the money was originally deposited to protect these various deals you

328 have spoken of; and, if you saw the entries, what they said as to where the money was deposited to protect said deals.

A. I would not be positive as to the identity of the entry any more than what I have written down here. It is my impression the entry is just as it is written down.

Q. According to that entry, where did the books show the money to be deposited so protect the deals—in what bank?

A. They were in the first place in the Merchants' Bank of Canada, but at the time I was talking to him had been transferred to the Bank of British North America; that is where the books showed it at that time.

Q. You may examine the accounts I now show you and state what they are and attach them to and make them a part of your deposition.

(Witness examines papers.)

A. These are accounts sales of deals in wheat, pork, corn, and oats including the years 1879, 1880, 1881, and 1882 from Mr. Barber to myself.

Q. You may state whether they include accounts of most of the deals that Mr. Barber made for you.

A. Yes, sir; they are mostly all of the deals that were made.

Counsel for defendant Barber objects to any statements so far as they do not pertain to the contracts in question.

Q. Proceed and state the amount, the total amount, of all the trades.

329 A. The total or gross amount of the several deals from 1879 and 1880 and 1881 and 1882 is nearly three million dollars; I mean the value of the property dealt in.

Q. I now place in your hands an account of transactions between you and Mr. Barber, and ask you to make it also an exhibit to your deposition and state what it is.

(Witness examines papers.)

A. It is a statement of account rendered by Mr. Barber to me, running from May 1st, 1882, to April 24th, 1883; this includes the wheat in controversy, the 100,000 bushels of wheat in controversy.

Q. You may state whether upon all these deals of three million dollars of wheat there was received or delivered by you or by him, or by him for you, a single bushel of wheat or any other commodity dealt in.

Counsel for defendant Barber objected to the question on the ground that the witness left with Mr. Barber the making of the contracts, or directed him as to the making of the contracts.

A. No, sir; there was never a bushel of wheat or corn or oats that I bought or sold through Mr. Barber that was either ever received or delivered by me, or pork either; it was simply dealing in margins—paying the differences and receiving the differences.

Q. I place in your hands two letters, marked "Exhibit- 1 and 2," and ask you to state in whose handwriting they are and

330 whether you ever saw the party write them and from whom you got them, and ask you to make them exhibits also to your deposition.

A. Yes, sir; they are in the handwriting of Mr. Barber; were sent to me by mail from him.

Q. I will place in your hands some telegrams, and ask you from whom you received them and ask you to make them also exhibits to your deposition.

(Witness examines telegrams.)

A. I received these telegrams from Mr. Barber and Mr. Maltman; mostly from Mr. Barber. There are two or three of Mr. Maltman's telegrams in this lot; the balance are all from Mr. Barber.

Cross-examination by Mr. DENT:

Q. You were examined at length in the suit at law, in this suit,

which you brought against Mr. Barber for $11,412.50, were you not?

A. Yes, sir.

Q. Do you remember that it was stated on the trial that the evidence taken at that time was intended to be applicable to the suit in chancery, or that it would not be necessary to retake the evidence in the suit in chancery?

A. I could not state as to the nature of some conversation I heard between you and General Stiles on that subject; the substance of it I could not remember.

331 Q. Do you not remember that when I was about to make my argument in the case I suggested to Judge Blodgett that the evidence taken there was to be applicable to the suit in chancery, so that it would not have to be taken over again, and General Stiles assented to that?

A. I know that. You talked amongst yourselves, but it was in a legal way, and I did not give any attention to it, and I am sure I could not remember the drift of it. It was something about the chancery suit, I remember.

Q. That very evidence that you gave at that time is embodied in the reporter's transcript, which is to be used as evidence in this case, isn't it?

A. I suppose so. I have no way in regard to reading it over. Of course I suppose it is all right.

Q. You had a number of other letters from Mr. Barber while these transactions were going on, while this large deal was pending, had you not?

A. I don't know. I don't think I had. I never got many letters from Mr. Barber. I brought up all that I could find on the first trial.

Q. Are these two you have now produced the only ones you do find?

A. There were three; and it seems there is one missing since that time.

Q. These are marked Exhibits No. 2 and 3.

332 A. There was another letter on the first trial, and it cannot be found now for some reason or other.

Q. You produced a number of telegrams marked Exhibit F; there seems to be twenty of these telegrams. Are these all you preserved of the telegrams sent you by Mr. Barber and Maltman?

A. No, sir; I have a great many more previous to that.

Q. You have selected out these from the mass, then?

A. No, sir; these are simply in connection with this particular deal, at the time this particular deal was in operation. I have telegrams a year previous to that, and some after that, and yet some of those te grams presented have no relation to this particular deal.

Redirect ex'n by Mr. NINDE:

Mr. NINDE:

Q. State whether, prior to the difficulty involved in this suit, you had any knowledge of the form of the contracts Mr. Barber was en-

tering into as your agent and on your behalf with other parties, or who such parties were. State fully as to what you knew, if anything, about such contracts being absolute contracts to receive or deliver, the subject-matter of such contracts, or what your understanding was in that behalf.

Counsel for defendant Barber objected to the question, the witness having been already examined on the subject, and his
333 secret understanding, if any, or any matter resting in his own breast, not being relevant or pertinent.

A. I would state that I knew of no contracts—that is, to deliver or to receive grain or any other property. On the contrary, it was expressly stated between myself and Mr. Barber that I was simply to receive the differences one way or the other—profits on the deal, whatever that may be, as the change of the market may happen, and that the contracts, as far as delivering and receiving property, was all illegitimate; it was simply trading in options. I knew nothing about his contracts with other parties.

Q. What did you know, if anything, during the whole course of your business with Mr. Barber and up to July, 1882, after the 100,000 bushels of wheat in controversy was contracted about, of the parties with whom he entered into contracts for you, or of the nature of such contracts?

A. I knew nothing about parties that he pretended to have made contracts with, and only got the names of them from his bookkeeper when I went up to find out where my money was.

Q. The question is, rather, what you knew, if anything, about any of the parties that he had dealt with during the course of the previous business up and until after these contracts to sell were made?

A. No; I never knew of any party except these—that is, connected in this present controversy.

334 Q. When did you find their names; before or after the contracts were made?

A. Long after the contracts were made. It was in the month of August or September.

Q. What did you know up to that time as to the form or nature of the contracts he was entering into for you in respect to delivery?

A. I knew there was no contract to deliver. This contract, like all the other former contracts, was simply an optional contract to pay the difference or receive a difference.

Q. I am speaking now not concerning the understanding between you and Mr. Barber, but as to what you knew during all this course of business as to the actual contracts and the form thereof that he was entering into on your behalf.

A. For me?

Q. Yes, sir.

A. They were all gambling contracts; understood such, made as such; simply trading in options.

Counsel for defendant Barber objected to the answer.

Q. Do you mean to say that they were understood between you and Mr. Barber to be gambling contracts, or do you mean to say that you knew what the understanding was between Barber and the parties with whom he was dealing?

Counsel for defendant Barber objected to the question as being leading and calling for conversation between parties without the knowledge of the witness, and as being improper for re-ex-
335 amination, and as being in reference to a matter which has already been fully gone over.

A. Yes; I mean to say that the understanding between Mr. Barber and myself was that my contracts were simply trading in options, in differences—gambling and nothing else; that no property of either kind was expected to be received or delivered, neither was any property of any kind either received or delivered—simply paying the difference.

Q. Now, I repeat that part of the question that asks you to state whether or not you knew as to the understanding or agreements actually entered into between Barber and the parties with whom he was dealing.

A. No, sir; I knew nothing about them. They were kept secret from me, and I know nothing of whom he sold to or bought from.

Q. I now call you attention to the proceedings in court referred to by Mr. Barber in his testimony of one Wright against the board, and also the case of Mr. Barber against the board of trade, and ask you to state what steps you took in connection with those matters, and for what reason.

Counsel for defendant Barber objected to the question as relating to a matter that has already been gone over by the witness in his testimony, and that the object of re-examination is not apparent.

A. I would state that when the July deal had terminated—
336 that is, on the last day of July—there was a corner in the market in July wheat. The manipulators of the deal—Armour and Kershaw and others—had forced the price of July wheat up, by cornering the market, to $1.35 a bushel, and held it there in the face of a better article of number two red wheat selling at 98 cents a bushel, making it a swindle, as they term it, of 37 cents a bushel against the parties who had sold July wheat; and when I seen Mr. Barber, on the last of July, he stated they were going to deliver them number two red wheat and make a tender of it to fulfill his contract, but it was considered not a good tender by the board of trade, and the concerning parties insisted on the squeezing price of $1.35 a bushel; therefore a great many members of the board of trade being injured protested against the injustice, and formed what they called a contested party with Mr. Wright at the head of them. I was not a member of the board, hence I had nothing to say in that matter, yet I was very glad to have the proceedings going on, and Mr. Barber joined in with those contestants to contest the action of the board in fixing the price of $1.35 a bushel; and these contestants in the Wright case, as they spoke of it, being the one which would govern

all others, as being a contest case, they employed attorneys, Mr. Burke and Judge Fuller and some other attorney, I understand, to represent them, and I paid a portion of Mr. Barber's assess-
337 ment, whatever that was, as fees in contesting the cases before the court—that is, Mr. Maltman paid the money and I paid him; that is all I had to do with the legal part of it. So far as I understood it, Mr. Barber's case was merged with the Wright case; we all hung together. I took no steps, individually, in either of the cases. I simply paid the money, which was part of the fees that Mr. Barber would have had to pay to the attorney.

Q. You may state what was ever said between you and Mr. Barber, if anything, and if nothing, say so, upon the question as to the effects or purpose of this contest that you were giving your consent to, adopting or validating or affirming any of these contracts that he had made on your behalf as to their legality.

Counsel for defendant Barber objected to question as immaterial.

A. There was nothing said whatever on that head.

Q. You may state whether or not, in any identity you had with those movements, you understood or expected that the steps so taken should change in any way your relation to the contracts he had already made or claimed to make under your authority.

Counsel for defendant Barber objected to the question as relating to a matter not competent.

A. None whatever.

Q. You may state whether or not up to that time you knew what the precise terms of the contracts were that Mr. Barber
338 claimed to have entered into on your behalf in those matters.

Counsel for defendant Barber objected to question as a matter that has been gone over, and one which the witness has already testified fully about at different times, both in the suit at law, the evidence in which has been incorporated in the present suit, and also on his present examination.

A. Up to what time? Up to the commencement of the legal proceeding?

Q. Up to the time you took the steps, whatever they were, that you did take that you have spoken of—up to that time whether you knew what the forms of the contracts were or their substance either.

A. No, sir; I knew nothing about them.

Q. You may state what you have ever done, if anything, or said to Mr. Barber, if anything, or the parties to whom he claims to have sold said 100,000 bushels of wheat in controversy, if anything, about you concurrence in the contracts in controversy, or that feature of them that requires the delivery by you of the wheat.

Counsel for defendant Barber objected to the question as the witness' telegrams and letters and his acts otherwise determined the matter.

A. I never made any or agreed to any concurrence of the con-

tracts which Mr. Barber pretends to have made, either with him or with the parties. On the contrary, I protested against the
339 unfairness of the deal, and this contract stood like all others I had made, simply trading in options, and never expected to deliver wheat and never tendered any wheat.

Q. You may state whether that was your understanding of the contracts during all the time said legal proceedings and negotiations were progressing.

Counsel for defendant Barber objected to the question as incompetent and improper.

A. Yes, sir; that was my understanding.

Q. You may state whether you ever knew to the contrary until the trial of the case at law, when Mr. Barber introduced the parties claiming to have purchased the wheat and when they testified that they expected to have a delivery of the commodity.

Counsel for defendant Barber objected to the question as incompetent.

A. No, sir; I never heard it intimated previous to that that there was any pretended earnestness in the contract, but they were all purely fictitious and gambling, so far as I was concerned.

Recross-ex'n by Mr. DENT of JAMES B. WHITE:

Mr. DENT:

Q. Do you mean to say that Mr. Barber kept anything secret from you of the business carried on by him under your direction?

A. Yes, sir; I do.

Q. Haven't you stated before that you had no complaint of any disobedience of orders by him, and that he executed your orders?

340 A. I did not order him to divulge a secret.

Q. Did not you order him to buy?

A. Yes, sir.

Q. Did not you order him to sell?

A. Yes, sir.

Q. Didn't you order him to cover?

A. Yes, sir; he done all these things in secret.

Q. Did you ever make any inquiry of him about the name of the party to whom he had sold or the name of the party from whom he had bought?

A. No, sir.

Q. You knew that he guaranteed the trades to you, didn't you?

A. That was the understanding; yes, sir.

Q. You knew he was under obligations to deliver this wheat the last of July unless the transaction was otherwise closed, didn't you?

A. No, sir; I knew to the contrary, that he was not under obligations.

Q. Didn't you advise the tender of the wheat?

A. He did not tender any; he borrowed a receipt.

Q. Was not that a tender?

A. It probably would comply with the formalities, but it was not a tender.

Q. It was, according to your judgment, a matter of right.

A. It should have been a tender, according to my judgment.

Q. So that you knew the contracts were open, and that it rested with him or you to comply with them, didn't you?

A. It rested with him.

341 Q. The last of July?

A. To fulfill the contract?

Q. Yes, sir.

A. He simply had to fulfill them by paying the differences one way or another. That is the way I fill mine. He had my money.

Q. If that is the way in which they were to be settled what right had he to make a tender of the wheat?

A. That was simply to keep up appearances with the clique or the cornering party, as they term it, who had this wheat cornered.

Q. But Mr. Barber was not in collusion with those?

A. I don't say he was; he was a member of the board, though.

Q. Didn't you understand it was his right, and that it was also his duty, to make a tender of the wheat, because the contracts required him to deliver the wheat?

A. No, sir; it was only to pay the difference. They wanted no wheat; they wanted the difference. If they had been in earnest about the wheat they would have taken the tender made.

Q. What explanation have you of the fact, conceded to be a fact, that you approved of the tender of the wheat, advised it beforehand, or approved — afterwards?

A. I approved — because it was of no injury to the parties which had the pretended trade. They were getting a better article

342 than they bought; therefore they ought to be satisfied. They pretended to be in earnest in wanting wheat, and where a better article was tendered it showed it was simply a gambling process and that they wanted the money.

Q. That tender was made on account of the sale of the 100,000 bushels of wheat in question?

A. I suppose so.

Q. The contracts made by Barber for you?

A. He may have had other contracts.

Q. Didn't you understand it to be on account of these contracts?

A. He told me so; I did not see it; he stated so.

Q. Didn't you afterwards advise with your attorney in Fort Wayne or elsewhere as to whether that tender was good under the rules of the board of trade, and advise Mr. Barber or Mr. Maltman that you believed it was good?

A. I believe it now to be good with honest people; anybody would say that it was good. That did not make the tender good.

Q. Did not you advise Mr. Barber that you believed it was good?

A. I possibly may. I believe now it is good.

Q. Was not that tender actually made on the basis of the contracts subsisting and requiring Mr. Barber to deliver the wheat?

A. No, sir.

Q. Do you mean to say there were no contracts?

A. Certainly there were no contracts to deliver wheat.

Q. Did not you understand the contracts to be — deliver the wheat during the month of July?

343 A. There was a pretended time to deliver wheat, but it was simply a gambling affair from beginning to end. Everybody knew that that had anything to do with it. That was not the first contract I had. I had hundreds before that.

Q. Was not this the case, that you wish to construe it so in your own mind as a matter of theory in this case, but that in point of fact you knew that there had been a contract to sell different quantities of wheat, amounting to 100,000 bushels, deliverable at the seller's option during the month of July, and that those contracts were open, and for that reason the tender was made?

A. Yes, sir; they wanted the money, not the wheat; they were offered better wheat than they had bought; if they had been in earnest they would have taken it.

Q. How do you know they wanted money?

A. They have my money yet.

Q. They have the money now, but how do you know they wanted the money on the 31st of July?

A. Because they would not take the wheat was the proof they wanted money—when they were tendered better wheat.

Q. They were entitled by the contracts to No. 2 spring wheat, were they not?

A. I don't know as to that; I suppose they were.

Q. Then it was a matter of construction as to whether red winter wheat would be a good tender under these contracts, was it not?

A. No, sir; not a matter of construction.

344 Q. Why not?

A. It was a matter of oppression.

Q. That is, you think that by reason of the corner existing they were enabled to get more damages on account of the non-delivery of the number 2 spring wheat than they otherwise would?

A. Simply extortion—simply a matter of oppression to get money on that wheat.

Q. That is not a ground of complaint against Barber, is it, when he executed your orders?

A. Yes, sir.

Q. In what respect?

A. He is a member of the board.

Q. Can he be made responsible for executing your orders simply because other people asked him for more damages than you thought they ought to receive?

A. Yes, sir; he ought to condemn the injustice practiced on me, inasmuch as he is a member of the board.

Q. How could he do that?

A. By his voice and actions.

Q. In what way?

A. He could have sat down on the board where they approve of such villainous proceedings and kept the money in his pocket.

Q. You mean to say he ought to have forfeited his membership?

A. Yes, sir; he would have forfeited it if it had been his own money, I think, too.

Q. Did not you advise beforehand, and afterwards, too,
345 that a decision of the committee of the board of trade should be taken rather than that any excessive damages should be paid?

A. Yes, sir; I believe there was some honest men left in that board of trade.

Q. You wished to have the contracts observed, didn't you, carried out, and yet that, the grain not having been delivered at the time, that the committee should pass upon the price fixed, and equitable price for adjusting; is not that the fact?

A. That is in keeping with their own rules; that is not my dictum; that is in keeping with the rules of the board of trade.

Q. You did not ask Mr. Barber to settle with the parties at that time?

A. I told him not to pay the money out.

Q. Did not you tell him that the judgment of the committee should be taken as to what the price should be for making payment?

A. No, sir.

Q. Don't your correspondence show that?

A. No, sir; I said I believed if a committee was called and would get fairly into the matter that no committee would fix that matter above ten or fifteen cents a bushel over the other wheat. I did not think any committee would have the hardihood to act the villainous part they did.

Q. Is not it a question whether they did act any villainous part?

A. No; it is as clear as noonday.

Q. That is a question of the weight of evidence?

346 A. No, sir; they suppressed the evidence; they would not permit evidence to the contrary; simply took their own view of it.

Q. That whole matter was set out in Mr. Barber's bill, wasn't it, as far as you know?

A. I believe so; I suppose so.

Q. That was the understanding you had with Mr. Wright, wasn't it, and others, that those matters would be set out for the consideration of the court?

A. I had nothing to do with setting them out.

Q. Didn't you understand they were to be set out?

A. I understood they were to be.

Q. You did not ask Mr. Barber to step down and out then, but you preferred to have the courts determine whether that award was binding?

A. I had nothing to do with him stepping down and out. I would have stepped down and out. If I was the guardian of other people's money, the agent of it, I would step down and out.

Q. That is a matter about which there could be differences of opinion.

A. I understand that.

Q. It is a mere matter of conjecture.

A. It is a fact, nevertheless. If I was intrusted with a man's money and another man was trying to get it I should hold that money.

Q. Didn't you know Mr. Barber observed your orders to the letter as to that matter?

A. No; he did not; he did not pay me the money.

347 Q. You did not even ask him for the money until after the supreme court had decided the case against Mr. Wright?

A. No, sir; I thought I would get it without that.

Q. You left the money in his hands for his protection, because you knew the parties were claiming the wheat?

A. No, sir; he kept the money in his hands.

Q. You allowed him to keep it?

A. I have not got it yet; he has got it.

Q. Don't you know he has paid it out to those men?

A. No, sir; I do not.

Q. Has not he explained that to you?

—. It is possible he has; I have not heard him say so.

Q. You have seen the checks?

A. No, sir; I did not.

Q. You had an opportunity?

A. Yes; I paid no attention to them.

Q. They are all here?

A. I suppose so.

Q. It was after the decision of the supreme court in the Wright case and after the dissolution of the injunction that you served the notice on Mr. Barber, was it?

A. No, sir; it was after the supreme court had determined this board of trade case—not my case; I had nothing to do with it.

Q. After the 31st of July, 1882, did not you advise Mr. Barber that you were not willing to have the trade scratched even—using the word scratched—but that you were entitled to damages on account of those contracts?

348 A. Yes, sir; I had made by the deal, and was honestly entitled to a profit of $23,000.

Q. You mean to say on account of this 100,000?

—. Yes, sir; I had taken my risk, put up my money to win, and did win that much money.

Q. How do you figure that out?

A. I will tell you how I figure it out. Mr. Barber, according to his telegrams to me, stated he sold the wheat at $1.23 and $1.25 on the 31st of July; it was worth 98 cents; therefore there would be $23,000 in that deal. There would be that much difference in the price of the wheat that I was entitled to.

Q. In stating the telegrams, you don't mean to state those prices as covering the whole 100,000 bushels. Were there not different prices at which the wheat was sold?

A. Yes, sir; they were sold from $1.23 to $1.25; it would average about $1.24 the wheat was sold at.

Q. Don't you know that at the close of the market on the 31st

of July the estimate of the price of number 2 spring wheat was $1.36 per bushel?

A. No, sir; I know it was not; I know there was a gang here or cornering crowd which pretended it was, but that wheat was only worth in this market about 98 cents a bushel; it was only worth $1.08 in New York about that time.

Q. Do you speak from your familiarity with the board of trade?

349 A. I speak from what is pretended to govern the board of trade—that is, honesty; and they say it should be fixed at an honest price, and it was not.

Q. You know, do you not, the price is regulated almost altogether by dealings on the board of trade?

A. Well, the price of the wheat at that particular time on the 31st of July —. This cornering party, as I have stated, had made a pretended price of $1.35 a bushel. They pretended it was worth that, when, in truth and in fact, it was only worth 98 cents a bushel.

Q. So far as dealings on the board of trade went the price was $1.35 or $1.36, wasn't it, or about that?

A. No, sir; there was none selling on the board of trade. This cornering clique had their wheat all in their own hands.

Q. Do you speak of knowledge on your part as to there being none selling on the board of trade?

A. Yes, sir; I am speaking of knowledge.

Q. Were you there to see?

A. Yes, sir; I was there.

Q. On the board there?

A. Yes, sir.

Q. You had been there somewhat frequently before?

A. Yes, sir; frequently.

Q. You had noticed sales and purchases being made?

A. Yes, sir.

350 Q. You knew of the form of the business there, didn't you?

A. It was simply calling out the purchases and the sales, and a pretended formality. I don't know what that amounted to.

Q. And entering the matter on the cards?

A. And making memoranda. I don't know what they done afterwards. They would make memoranda certainly. No one could keep everything in his head.

Q. Entries would be made on the books?

A. I don't know anything about books. I never seen any of the books afterwards.

Q. When you speak of the price on the board of trade being 98 cents a bushel or thereabouts do you make that up by conjecture?

A. No, sir; by actual fact.

Q. What actual fact?

A. That there was no wheat selling that day but what the clique owned. The clique owned all the wheat, and they forced it up to $1.35 a bushel when it was worth only 98 cents.

Q. From the fact that there was none selling you conclude it was only worth 98 cents?

A. Not from that fact alone, but from a stronger one—the fact that better wheat was selling at 98 cents a bushel, which on all occasions sells for 10 cents more; is now worth ten cents more.

Q. As to *their* being a corner, what knowledge have you on that subject?

351 A. That was sufficient knowledge if I had no other, yet there was other knowledge besides that, but that of itself was sufficient knowledge. The fact of parties pretending to bid that much for wheat when a better article was selling for that much less—that of itself was sufficient; but there were other reasons besides that. There was no disguise about it being a corner. Armour and his crowd said they had it cornered, and they saw now that at that time it was cornered. They admit it now.

Q. Do you mean to say now that they say or did say at that time they had wheat cornered?

A. Yes, sir; Armour said so in one of his interviews a month before the corner culminated. It was stated in the Tribune two or three weeks previous to that.

Q. That is the way you get your information—having read some supposed interview?

A. No, sir; I get it from a dozen members or so of the board of trade. Mr. Barber will tell you so.

Q. That is mere hearsay?

A. No, sir; actual knowledge of it.

Q. You have continued to deal on the board of trade, haven't you?

A. Yes, sir.

Q. Are you dealing in a different form from those which Mr. Barber conducted for you?

A. No, sir; purely gambling.

Q. I don't ask you whether they were gambling or not; that is the word you chose to use.

352 A. It is a true word. Betting on a horse-race, if I thought I could make some money, is the same thing.

Q. From what time did you cease to deal with Mr. Barber?

A. I think it was in the winter of 1882 or fall of 1882 he declined to do any more business with me for some reason.

Q. And since then you have gone to another house?

A. I have been doing some business with several houses.

Q. With A. M. Wright & Co.?

A. Some with A. M. Wright.

Redirect ex'n by Mr. NINDE:

Q. You may state whether, in making this tender, it was expected that the wheat would be received, and what Mr. Barber said to you in reference to that, or whether it was simply a formal effort to get out of the difficulty there.

Counsel for defendant Barber objected to the question as having been gone over in various forms.

A. I would state — that morning, the 31st of July, 1882, when sitting in Mr. Maltman's office on South Water street, Mr. Barber

stepped in. He says, "Hallo! I thought you had come up." I said, "Yes; I come up to see about this deal; what are you going to do about it?" He said, "Well, we are going to deliver red wheat." Said I, "Do you think they will take it?" He said, "No; he did not think they would, but wanted to keep up appearances
353 anyhow;" and I said it was a wicked, unjust deal, this way of treating us; that we had made this profit and won it, and we were entitled to our money. He said: "Well, they will call a committee, and the committee will fix the price down ten or fifteen cents a bushel; that will let you out with good margin, and the worst they will do they will scratch the trade." I said, "They ought not to scratch the trade; we are entitled to this profit; we ought to have it." He said, "That will be the worst of it, anyhow; it will only take a week to fix it up." That is the substance of our conversation. He then said he must go up to the board, and went off. Afterwards I met him—met Mr. Barber. I says, "What did you do?" He says, "I went to Hutch.—old Hutch.—and borrowed 10,000 bushels and made them the tender; of course they would not take it." Says I, "Did you tender it to all?" Says he, "Yes, sir; I tendered it around." Says I, "Did you buy it?" He says, "No, I just borrowed it. I do my banking there, and he accommodated me with the loan." That is about the substance of the conversation; there may have been something more said.

Q. You spoke about the value of this class of number 2 spring wheat in New York at the time upon your cross-examination. State what you know about that price.

A. I know that number 2 Chicago spring wheat—the wheat
354 that was pretended to be sold for me on this market—was selling on that day, the 31st day of July, 1882, in New York at $1.08 a bushel.

Q. What is the fair difference in value in Chicago and New York of that class of wheat?

A. Well, sir, there would be at least 12 cents a bushel difference; twelve and fifteen cents between the Chicago price and the New York price; there always is, unless there is a corner.

Q. What was the value of this wheat after that date in Chicago and the prices became settled as compared with the New York prices?

Counsel for defendant Barber objected to the question as having been gone over.

A. It settled down to its legitimate value.

Q. How soon to its legitimate value, and what was that value?

A. About five cents lower a bushel than number two red wheat in this market.

Q. You may state what you ever said to Barber prior to the sale of this 100,000 bushels of wheat, at any time in your interviews, about your cash ability to receive and pay for commodities purchased upon the board for you, more especially as to your ability to put up large sums of actual cash to pay outright for commodities in

order to take them into possession or to purchase them to fill contracts of sale.

Objected to.

A. Well, I will state that it was always knowingly and plainly understood that there was to be no purchasing of the actual
355 property or selling of the actual property.

Q. The first question rather directs itself to what was said between you, the information or notice that you gave him as to your ability to put up spot cash for large quantities of produce in this market.

A. I will state that the first interview I had with Mr. Barber was in December, 1879. Previous to that the dealings had been done through Mr. Maltman by Mr. Barber. When I came up at that time in 1879, the first of December, I think it was, I had bought 100,000 bushels of December corn through Mr. Maltman by Mr. Barber. Mr. Barber had bought it; had sent the order through Mr. Maltman, and I came up on the first of December to see about it. The market was considerably against me, and I remarked to Mr. Barber, after being introduced to him, "This is a pretty tough deal;" that the market was against me now, and asked him how he would settle it. Well, he said he would close it out. I asked him what the loss would be. He said something about $4,200 or $4,300, I think it was; so I told him that was all right; I did not like to lose, but I proposed to make the money back where I lost it. Says I, I am not afraid to gamble with those fellows; all I want is fair play; of course this business here is all gambling." He said most of it is, but he said, "There are some legitimate houses handle the property regularly; of course we all
356 know it is principally gambling." Says I, "Now, so far as I am concerned, I don't want this known; I am doing business all over the country, and it would be an injury to me; I want it kept to ourselves." He said, "All right; I understand it; Mr. Maltman told me all about your business." He said a great deal of trade is done that way.

Q. The question is directed to the knowledge that Barber had of your intention or ability to use in payments for grain or in the conduct of said business large sums of cash.

A. I told Mr. Barber plainly that I did not want to be known in the business at all; that it would be injurious to my credit; consequently I wanted the thing kept quiet, and he said it should be kept quiet; that a great many traded just that way—did not want it known—and that he understood my business fully; that Mr. Maltman told him all about it.

Q. You seem not quite to get the idea of my question, which is as to what you said to Mr. Maltman, of what information you gave him as to your intention in purchasing, to purchase and pay actual cash for grain in selling, in raising the money to buy the commodity, in order to deliver it upon such contracts.

A. I told Mr. Barber plainly; says I, "You know, of course, I don't want none of this property, and I don't want any corn or

wheat, or anything of that kind; all I want is my money; if
357 I make it I want you to place the deals with responsible parties." Says he, "I know them; there are lots of parties I would not trust over night; I will place your sales safe and when I make money I will pay you. I said, "You know my business is different from yours; I am not dealing in this kind of property, and don't expect it and don't want it; all I want is the trading in the margins."

Q. What was said in that interview about raising the money to buy 100,000 bushels of corn in order to deliver upon the contracts at that time?

A. Not a word; never thought of it.

Endorsed. Filed May 29, 1884. Wm. H. Bradley, clerk.

358 *Transcript of Record.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

Pleas before the Honorable Rollin S. Williamson, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the fourth day, of June, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the hundred and seventh.

Present: The Honorable Rollin S. Williamson, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Seth F. Hanchett, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and eighty-three, the plaintiff, by his attorneys, filed in the office of the clerk of the superior court of Cook county his certain *præcipe* for summons, which is in words and figures as follows, to wit:

359 STATE OF ILLINOIS, } ss:
County of Cook, }

Superior Court of Cook County, of the May Term, A. D. 1883.

JAMES B. WHITE, Plaintiff, *vs.* GEORGE M. BARBER, Defendant.

Assumpsit; damages, $15,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises, to the damage of said plaintiff in the sum of fifteen thousand

dollars, direct the same to the sheriff of Cook county to execute, and make it returnable to the June term of said court, A. D. 1883.

STILES AND LEWIS,
Plaintiff's Attorney-.

To John J. Healy, Esq., clerk.

CHICAGO, *May* 10, 1883.

And on the day and year last aforesaid, to wit, May 10, A. D. 1883, there issued out of the office of the clerk of said court the people's writ of summons; which writ, with the return of the sheriff thereon endorsed, is in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The people of the State of Illinois to the sheriff of said county, Greeting:

360 We command you that you summon George M. Barber, if he shall be found in your county, personally to be and to appear before the superior court of Cook county on the first day of the term thereof to be holden at the court-house, in the city of Chicago, in said Cook county, on the first Monday of June next, to answer unto James B. White in a plea of trespass on the case upon promises, to the damage of said plaintiff, as it is said, in the sum of fifteen thousand dollars; and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 10th day of May, A. D. 1883.

[SEAL.] JNO. J. HEALY, *Clerk.*

Served this writ on the within-named George M. Barber by reading this writ to him this 12th day of May, 1883.

SETH F. HANCHETT, *Sheriff,*
By J. H. BURKE, *Deputy.*

And afterwards, to wit, on the 18th day of May, in the year last aforesaid, to wit, A. D. 1883, there was filed in the office of the clerk of said court a certain declaration, which is in words and figures following to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, of the May Term, A. D. 1883.

James B. White, plaintiff in this suit, by Stiles and Lewis,
361 his attorneys, complains of George M. Barber, defendant in this suit, summoned, etc., of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the 1st day of May, in the year of our Lord one thousand eight hundred and eighty-three, at Chicago, to wit, at the county aforesaid, became

and was indebted to the said plaintiff in the sum of fifteen thousand dollars of lawful money of the United States of America for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant and at the special instance and request of the said defendant; and, being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterward requested; and

Whereas, also, the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and
362 truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested, and the said plaintiff avers that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further sum of fifteen thousand dollars of like lawful money, as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year and at the place aforesaid, had notice; and

Whereas, also, the said defendant afterwards, to wit, on the same day and year and at the same place aforesaid, was indebted to the said plaintiff in the further sum of fifteen thousand dollars of like lawful money, as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant; and in the like sum for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the like request of the said defendant; and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and in the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendant to said plaintiff; and in the like sum for
363 the price and value of work then done and material for the same provided by the said plaintiff for the said defendant and at the like special request of the said defendant; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the same place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly, to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested; and

Whereas, also, the said defendant afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of fifteen thousand dollars of like lawful money as aforesaid; and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid and at the place last aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested: Nevertheless, the said defendant (although often requested, etc.) has not yet paid the said several sums
364 of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of fifteen thousand dollars, and therefore the said plaintiff brings suit, etc.

STILES AND LEWIS,
Plaintiff's Attorneys.

Copy of Account Sued on.

George M. Barber to James B. White, Dr.

To goods, wares, and merchandise sold and delivered	$15,000
To money lent and advanced	15,000
To money paid, laid out, and expended	15,000
To money had and received to and for the use of said plaintiff	15,000
To money due for interest and forbearance	15,000
To labor, services, and material	15,000
To balance due on account stated	15,000

Afterwards, to wit, on the 6th day of June, in the year last aforesaid, to wit, A. D. 1883, there was filed in the office of said clerk a certain plea, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
Cook County, }

In the Superior Court of Cook County of the June Term, 1883.

365 GEORGE M. BARBER } Assumpsit.
at's
JAMES B. WHITE. }

And now comes the said defendant, by Dent and Black, his attorneys, and defends the wrong and injury when, etc., and says that he

did not undertake and promise in the manner and form as the plaintiff has in his declaration thereof complained against him, and of this he puts himself upon the country.

DENT AND BLACK,
Defendant's Attorney-.

Afterwards, to wit, on the 20th day of June, in the — last aforesaid, to wit, A. D. 1883, there was filed in the office of said clerk a certain petition and bond for removal of cause to the U. S. circuit — of the United States, which are in words and figures as follows, to wit:

Petition for Removal to the Circuit Court of the United States for the Northern District of Illinois.

In the Superior Court of Cook County, State of Illinois.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

To the said superior court of Cook county:

Your petitioner, George M. Barber, the defendant in the above-entitled cause, respectfully shows to this honorable court that
366 the matter in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars ($500), and that the petitioner was, at the time of the commencement of the said suit and still is, a citizen of the State of Illinois and resident of the said northern district of Illinois, and that said James B. White, the plaintiff, was, at the time of the commencement of the said suit and still is, a citizen of the State of Indiana; and your petitioner further shows that the present term of the said superior court of Cook county is the term at which said cause could be first tried, and that this petition is presented before the trial thereof; and your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and for paying all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and he prays this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed to said circuit court of the United States in and for the northern district of Illinois; and your petitioner will ever pray, etc.

GEORGE M. BARBER,
By DENT AND BLACK, *His Att'ys.*

367 STATE OF ILLINOIS, } ss:
Cook County, }

George M. Barber, being duly sworn, says that he has read the foregoing petition and knows the contents thereof; and he further says that the statements and allegations therein contained are true.

GEORGE M. BARBER.

Subscribed and sworn to before me this sixteenth day of June, A. D. 1883.

[NOTARIAL SEAL.] EBEN HALE WELLS,
Notary Public.

Know all men by these presents that we, George M. Barber, as principal, and William M. Gregg, as surety, are held and firmly bound unto James B. White in the penal sum of five hundred dollars ($500); for the payment whereof, well and truly to be made unto said James B. White, his heirs, executors, or administrators, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this — day of June, A. D. 1883.

Whereas the said George M. Barber has petitioned the superior court of Cook county, in the State of Illinois, for the removal of a certain cause therein pending, wherein said James B. White is plaintiff and said George M. Barber is defendant, to the circuit — of the United States in and for the northern district of Illinois:

368 Now, the condition of the foregoing obligation is such that if the said George M. Barber shall enter in the said circuit court of the United States, on the first day of the next session thereof, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, but otherwise the same shall remain in full force.

GEORGE M. BARBER. [SEAL.]
WILLIAM M. GREGG. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

William M. Gregg, being first duly sworn, on oath says that he is worth the sum of one thousand dollars ($1,000.00) over and above all his just debts and liabilities and legal exemptions.

WM. M. GREGG.

Subscribed and sworn to before me this 16th day of June, A. D. 1883.

[NOTARY SEAL.] EBEN HALE WELLS,
Notary Public.

On the day and year last aforesaid, to wit, June 20th, A. D. 1883, the same being one of the days of the June term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

JAMES B. WHITE
vs. } 86864.
GEORGE M. BARBER.

Assumpsit.

369 On motion of defendant's attorney, on filing petition and bond, it is ordered that said cause be, and is hereby, trans-

ferred to the United States circuit court in and for the northern district of Illinois, and that the clerk of this court do forthwith transmit to said United States circuit court a full and complete transcript of all papers and pleadings filed in said cause, together with all orders made and entered of record herein.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, John J. Healy, clerk of the superior court of Cook county in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court, on the common law side thereof, wherein James B. White was plaintiff and George M. Barber defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 27th day of June, A. D. 1883.

[SEAL.] JNO. J. HEALY, *Clerk.*

Endorsed: Filed June 28, 1883. Wm. H. Bradley, clerk.

370 Afterwards, to wit, on the fourth day of February, 1884, in the December term of said court, A. D. 1883, *in the December term of said court, A. D. 1883,* in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

Now come the parties, by their attorneys, and, upon issue joined herein, thereupon come a jury of good and lawful men, to wit, Thomas A. Doxey, John Ross, William Friese, Morell Fuller, William Dodds, Frederick H. Rohmeyer, William H. Johnson, Henry J. Traver, John Downing, C. C. Wilcox, A. S. Barnard, and C. G. Pettibone, who were all duly elected, tried, and sworn well and truly to try said issue, and, after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that the further trial of the cause be postponed until to-morrow morning.

Afterwards, to wit, on the fifth day of February, 1884, in the December term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

371 Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and,

after hearing the concluding evidence and a part of the arguments of counsel, the hour of adjournment having arrived, it is ordered that the further trial of the cause be postponed until to-morrow morning.

Afterwards, to wit, on the sixth day of February, 1884, in the December term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

Now come again the parties, by their counsel, and now comes also the jury in this behalf empaneled and sworn, and, after hearing the concluding arguments of the counsel and receiving the instructions of the court, the jury retired to consider of their verdict, and, by agreement of the parties, by their attorneys, the jury, when they shall have agreed upon a verdict, may sign and seal the same and deliver it to the officer in charge and disperse; and the parties, by their attorneys, also waive in open court their right to poll the jury or to have them present when the verdict is opened.

372 Afterwards, to wit, on the seventh day of February, 1884, in the December term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

Now come again the parties, by their respective attorneys, and the jury in this behalf empaneled and sworn this day, through the said officer in charge, — their sealed verdict, which, being opened and read by the clerk in open court, is as follows: We, the jury, find the issues joined for the defendant. And thereupon the plaintiff, by his attorney, moves the court for a new trial herein.

Afterwards, to wit, on the twenty-third day of February, A. D. 1884, came the plaintiff, by his attorneys, and filed in said clerk's office his motion for a new trial in said entitled cause; which said motion is in the words and figures following, to wit:

373 *Motion for New Trial.*

In the Circuit Court of the United States, Northern District of Illinois.

JAMES B. WHITE vs. GEORGE M. BARBER.

And now comes the said plaintiff, by Stiles and Lewis, his attorneys, and moves the court to set aside the verdict and grant a new trial in said cause, and shows to the court here the following grounds therefor:

1st. The court erred in its charge to the jury.

2nd. The court erred in its charge to the jury in the construction given in said charge to section 130 of chapter 38 of the criminal code of Illinois.

3d. The court erred in charging the jury that in order that the plaintiff might recover they must find that the contracts in question were gambling contracts within the meaning of said section 130.

4th. The court should have instructed the jury that if they believed that the contracts in question were gambling contracts, either within the statute or at common law, then the plaintiff might recover.

5th. The following portion of the charge to the jury was erroneous:

"The question of fact for you to determine under the proof is whether these dealings made by the plaintiff on the board of trade through the defendant as his broker were gambling
374 contracts within the meaning of the law." The statute of the State of Illinois upon the subject I will now read you. Section 130 of chapter 38 reads as follows:

"Whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so, in relation to any such commodities, shall be fined not less than ten dollars nor more than one thousand dollars or be confined in the county jail not exceeding one year, or both, and all contracts made in violation of this section shall be considered gambling contracts, and shall be void."

The plaintiff contends that the contracts in question made by the defendant for him and in his behalf were gambling contracts within the meaning of this law.

The question then arises, "What kind of contracts are prohibited by this statute?" You will notice the language is, "Whoever contracts to have or give to himself or another the option to sell or buy at a future time"—an option to sell or buy at a future time. The courts have construed to some extent the meaning of this statute, and I will read from a case decided by the Supreme Court of the United States the construction which is given upon it:

375 "The evidence in this record is by no means conclusive that the contracts for grain made by the defendants for the plaintiff were unlawful. They were made in the regular course of business, and for anything that appears in this record they could have

been enforced in the courts. It is true they were time contracts—that is, the seller had all of the month in which to deliver the grain, but the testimony of Wolcot is they were *bona fide* contracts for the actual purchase of the grain, and the only option the seller had was as to the time of delivery.

The obligation was to deliver the grain at all events, but it was the seller's privilege or option to deliver it at any time before the closing of business on the last day of the month. Time contracts made in good faith for the future delivery of grain or any other commodity are not prohibited by the common law or any statute of this State, nor by any policy beneficial to the public welfare. Such a restraint would limit commercial transactions to such a degree as could not but be prejudicial to the best interests of the trade. Our present statute was not in force when these dealings were had; consequently the rights of the parties are not affected by it. What the law prohibits, and what is deemed detrimental to the public interests is speculations in differences in market values, called, perhaps, in the peculiar language of the dealers, "puts and calls," which simply means a privilege to deliver or receive the grain or
376 not, at the seller's or buyer's option. It is against such fictitious gambling transactions, we apprehend, that the penalties of the law are applied.

Now, the question is, in the light of the testimony in this case, whether the contracts made between the parties in this case, the contracts in question in this case, were contracts to buy or sell at a future day, or whether they were simply absolute sales, in which the seller had the entire month, the month specified, in which to perform his contracts.

This court has found it necessary on several occasions to construe this statute, and has held, with the case which I have just read, that the statute is leveled against what are called these puts and calls—that is, the right or the privilege which a party may have to buy or sell of you at a future day—not an absolute agreement now to sell, but where one man pays another $5.00 or $10.00 for the privilege of delivering to him 1,000, 5,000, or 10,000 bushels of grain at a future time, or pays him a similar amount for the privilege of buying or accepting from him grain at a future time—a contract which cannot be enforced in terms, because it is wholly at the option of the party holding the option whether he will call for the grain or not; this is what is termed a gambling contract, or a put and call, or called an option to buy and sell at a future day, within the meaning of the Illinois statute.

6th. The court erred in its supplemental charge to the jury
377 after they had retired to consider of their verdict, which supplemental charge was as follows:

The court, at the request of the jury, read to the jury sec. 130, chap. 38, Rev. St. of Ill., and then explained further to the jury that the "option to buy or sell" prohibited by the statute means a privilege which the buyer or seller may or may not exercise at his option, and that a contract by which the seller absolutely agrees to deliver a certain commodity to the buyer within a specified time,

when the only option is as to the delivery within a certain time, such as within the whole of some month named, is not a gambling contract within the meaning of this statute.

7th. The verdict of the jury was contrary to the evidence.

8th. The verdict of the jury was contrary to the law of the case.

Wherefore the plaintiff prays that said verdict may be set aside and a new trial granted.

STILES & LEWIS,
Attorneys for Plaintiff.

Endorsed: Filed Feb'y 23, 1884. Wm. H. Bradley, clerk.

378 Afterwards, to wit, on the twenty-seventh day of May, in the adjourned May term of said court, A. D. 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

JAMES B. WHITE *vs.* GEORGE M. BARBER.

Assumpsit.

The court, having considered and being now fully advised upon the motion of the plaintiff heretofore entered herein for a new trial of this cause, overrules the same and awards judgment. It is thereupon considered and adjudged by the court that the defendant do have and recover of the plaintiff his costs about his defense in this behalf expended, amounting to — dollars and — cents, and that he have execution therefor.

379 Afterwards, to wit, on the third day of June, A. D. 1884, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE BANK OF BRITISH NORTH AMERICA
vs.
JAMES B. WHITE & GEORGE M. BARBER.

Know all men by these presents that we, James B. White, as principal, and James Lillie — John W. White, as sureties, are held and firmly bound unto George M. Barber in the sum of two thousand dollars, to be paid to the said George M. Barber, his heirs & assigns; — which payment, well & truly to be made, we bind ourselves & each of us, jointly & severally, & our & each of our heirs — executors, firmly by these presents.

Sealed with our seals & dated this 29th day of May, 1884.

Whereas the above-named James B. White has appealed from the decree this day entered in said cause in favor of said defendant,

George M. Barber, & against him, the said James B. White, to the Supreme Court of the United States, which appeal has been duly allowed:

Now, therefore, the condition of this obligation is such that
380 if the above-named James B. White shall prosecute his said appeal to effect & answer all costs and damages if he shall fail to make good his said plea in that behalf, then this obligation shall be void; otherwise to remain in full force & effect.

JAMES B. WHITE. [SEAL.]
JAMES LILLIE. [SEAL.]
JOHN W. WHITE. [SEAL.]

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that John W. White, one of the above-named obligors, is known to me to be perfectly good and responsible for the amount of the foregoing bond or any liability that may arise thereon.

NOBLE C. BUTLER, *Clerk*,
By H. C. HARTMAN, *Dep'ty.*

Approved:
H. W. BLODGETT, *Judge.*

Endorsed: Filed June 3, 1884. Wm. H. Bradley, clerk.

381 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein The Bank of British North America is the complainant and George M. Barber and James B. White are the defendants as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this fifteenth day of July, A. D. 1884.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

382 In the Supreme Court of the United States.

JAMES B. WHITE.
vs.
THE BANK OF BRITISH NORTH AMERICA and GEORGE M. BARBER.

Appeal from the circuit court of the United States for the northern district of Illinois.

Comes now the said appellant and says that manifest errors intervened in the proceedings and judgment in the court below, in this, namely:

The court below erred in rendering its said decree in favor of said defendant, George M. Barber, the said appellee in this court, & said court also erred in rendering its said decree against the said James B. White, the said appellée in this court.

The said court below also erred in its said finding & decree, in this, that said court found that this appellant, James B. White, had no legal or equitable title to or interest in said moneys described in said bill & answers in said cause, but that the legal & equitable title to said moneys were in said appellee, George M. Barber.

By LINDLEY M. NINDE,
Solicitor for Appellant, James B. White.

Endorsed on cover: N. Illinois C. C. U. S. No. 351. James B. White, appellant, *vs.* George M. Barber. Filed 8th October, 1884.

3-392

Office Supreme Court U. S.
FILED.
SEP 23 1887
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

No. ~~351.~~ 73

JAMES B. WHITE,
Appellant.

V.

GEORGE M. BARBER,
Appellee.

BRIEF FOR THE APPELLANT.

By L. M. NINDE,
Solicitor for Appellant.

FORT WAYNE, IND.
1887.

College Press Print: Fort Wayne, Ind.

The court below erred in rendering its said decree in favor of said defendant, George M. Barber, the said appellee in this court, & said court also erred in rendering its said decree against the said James B. White, the said appellee in this court.

The said court below also erred in its said finding & decree, in this, that said court found that this appellant, James B. White, had no legal or equitable title to or interest in said moneys described in said bill & answers in said cause, but that the legal & equitable title to said moneys were in said appellee, George M. Barber.

By LINDLEY M. NINDE,
Solicitor for Appellant, James B. White.

Endorsed on cover: N. Illinois C. C. U. S. No. 351. James B. White, appellant, *vs.* George M. Barber. Filed 8th October, 1884.

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Supreme Court of the United States,

No. 351

JAMES B. WHITE, APPELLANT,

V.

GEORGE M. BARBER, APPELLEE.

On the 24th of July, 1883, the bank of British North America filed its bill of complaint in the Circuit Court of Cook county, Illinois, in which the complainant averred that it had on deposit, in its office in Chicago, the sum of sixty-seven hundred dollars standing to the credit of one George M. Barber, of the city of Chicago; that the complainant believed the money was deposited by Barber as security for certain trades in wheat with certain members of the Board of Trade of Chicago, and that James B. White claims that said money belongs to him, and that said Barber, in depositing said money, acted merely as his agent; and, that White, on the 2d of April, 1883, demanded the payment of the money to him, and notified complainant that the money was his, and forbid the payment thereof to Barber, and it was further averred that on May 10, 1883, White commenced an action in the Superior Court of Cook county against complainant to recover the money which was yet pend-

ing. It is further averred that Barber was threatening to sue the bank for the money. The bill also contained the usual averments of a bill of interpleader and asks that White and Barber be required to interplead, that each set up his right to the money, and that the complainant be allowed to pay the same into Court and be dismissed, and that White and Barber be enjoined from proceeding against complainant at law for the same. To this bill White and Barber both appeared in said Circuit Court and answered the same.

WHITE'S ANSWER.

White, in his answer, admits the deposit in the bank in the name of Barber, but avers that it is a part of a larger sum placed by him in the hands of Barber to be used by him as margins in gambling contracts which Barber was to make for him on the Board of Trade in Chicago. That Barber in pursuance of said employment in April, May and June, 1882, made certain gambling contracts with certain members of said Board which were ostensibly for the sale of certain quantities of wheat to said members to be delivered in July, 1882, at the option of the pretended purchaser. That said pretended contracts were a mere form and cover, and the real intention of all parties was to settle said pretended contracts by the payment of the difference between the price at which it was sold and the market price of the same when delivery should be called. The answer admits he claimed and sued for the money.

BARBER'S ANSWER.

The deposit of the money is admitted. That on the 10th of October, 1882, he drew his check on another bank for $21,050 for which complainant gave him credit.

That he obtained margin certificates from said bank in duplicate which were settled and signed down, the money thus liberated again passed to his credit and was subject to his check, and that the $6,700 remaining in the bank at the time the bill was filed was the balance due him on said account. That he did not deposit the money as agent for White. That he did make certain sales and purchases of grain and pork for future delivery for him on the Board of Trade. That said transactions were in his own name and on which he was personally responsible. That the contracts were made with reference to the rules of the Board of Trade, and that the persons with whom said contracts were made were entitled to require as surety from buyers 10 per cent. margins on price of property sold. That margins should be deposited with the treasurer or in some bank authorized by the Board to receive deposits. That the certificates show the deposits were issued in duplicate and were not special but secured any and all deals between the parties till the balances were paid. That as commission merchant he made divers contracts for the sale of No. 2 spring wheat for White to be delivered in July of that year at prices specified in said contracts ranging from $1.22 to $1.25 to be delivered in lots of 5,000 bushels, but that White did not put him in funds to buy the wheat for delivery according to the contracts. That White was bound upon said contracts and he was from time to time called upon to deposit margins to secure the same, and did make deposits and procure certificates, several of which are set out and amount in the aggregate to $5,950. That the contracts were not performed by White. That the margins were furnished mostly from his own means to keep the contracts open

as White requested. That at the close of July, 1882, he tendered No. 2 red winter wheat which was refused. That the parties made large claims for damages against the respondent to which White objected and desired him to reduce them if he could, and for this purpose and at White's instance, he filed a bill in the Superior Court of Cook county against the Board of Trade refering to some or all the contracts on which he was liable on trades made for White. That the bill was filed to impeach the award of the committee of the Board in fixing the settling price under said contracts at $1.35 and to restrain the Board from enforcing said award and from disciplining him for not complying with the same.

It is averred the suit failed. That White staked the result of his contest as to the correctness of the claim for damages on the result of said suit, and that he knew if the suit failed the respondent would be compelled to pay the same. That the parties holding duplicate receipts were entitled to draw the money thereon and on his failure he was liable under the rules of the Board upon the settling price being fixed to be suspended if he continued in default. That such suspension was equivelant to the loss of his membership worth at the time $10,000. That he did settle on the 24th of April, 1883, the unsettled portions of said contracts and said duplicate receipts were signed down and said certificates returned to the bank which gave him credit for said moneys. The answer avers that he is not indebted to White and that the money is his own. It is averred that White would attempt to revoke his authority to make the settlement and sets up the claim that his authority to make said sales and sentlements was so executed as to make him

personally liable and hence coupled with an interest and that White could not legally or equitably revoke the same, and that if the said deals were illegal the right to settle was given him at the time the power to sell was given and White had no power to revoke the same. That said trades were but a small part of the dealings here made for White on the Board, many of which had been profitable, and he claims it would be unequitable for White to repudiate the transactions in controversy.

The bill appears on p. 2 and 3 printed record. White's answer on p.p. 6 and 7. Barber's answer on p.p. 7 to 15 inclusive. General replications on p.p. 16 and 17.

The cause was removed into the Court below on the application of said Barber. Both White and Barber were enjoined from sueing the complainant for the money and the money was paid into Court and the plaintiff dismissed and the defendants were ordered to interplead and settle the matters in controversy between themselves. P. 19 and 20.

On the 29th of May, 1884, said White and Barber filed a stipulation in Court in the following terms:

Bank of British North America v. Geo. M. Barber and James B. White. It is agreed by the defendants hereto that the testimony taken in the case of James B. White against said George M. Barber, brought in said Court upon the law side thereof, and in which final judgment was rendered this day for the defendant shall be used and introduced by the party taking the same as his testimony on the trial of this cause and each of said parties has also taken further testimony by agreement which each is also to have the right to read upon said trial all

of which shall be read as evidence on said trial, and no objection shall be made thereto on account of its informality or the informal manner in which the same has been taken, but the right to make and insist on all substantial objections on account of the incompetency or immateriality of said testimony, is reserved to each of said parties.

The pleadings and orders of this Court on the law side thereof, and the final judgment in said cause at law, of James B. White v. George M. Barber were read in evidence herein on the part of said George M. Barber, and the same are to be embraced in the transcript, if any be made up for the Supreme Court.

Chicago, May 27, 1884.

L. M. NINDE,
Counsel for James B. White.

DENT & BLACK,
Of Counsel for Geo. M. Barber.

The cause was finally heard on the 19th of May, 1884, and decree entered for said Barber, and that he was entitled to receive the fund in controversy, and the defendant, White, prayed an appeal which was duly granted. Said contract and final decree appear on p.p. 21, 22 and 23.

The appellant, White, for an assignment of errors, on the said record, proceedings and decree, says:

1st. The Court below erred in its findings and decree that said George M. Barber was and is entitled to said sum of sixty-seven hundred dollars referred to in the bill of said bank of British North America and is entitled to receive the sum of money so doposited by said bank in said court on account of said $6,700.

2d. Said court below further erred in its said decree, and in rendering the same that said appellant, James B. White, has no equitable title to said sum, or any part thereof, as against said George M. Barber and the said Court below further erred in its said decree that said Barber recover of said White the costs so reserved out of said sum by said bank taxed at $48.50, and said Court also erred in its said decree that said Barber recover of said White the further costs of said Barber herein expended.

By L. M. NINDE,
His Solicitor.

Whether or not this decree was erroneous depends upon two propositions:

First. That the contracts and transactions between White and Barber involved in the testimony were wagering contracts and void.

Second. That the $6,700 described in the original bill and in the answers of White and Barber was subject to White's demand if said transactions are void as wagers.

FIRST.

This wheat was sold by Barber for White without any intention of the parties that there should be any delivery thereof, but with the intention that the transactions should be adjusted and settled by the payment of the differences between the prices at which it was sold, and the price at the time stipulated for delivery.

The only direct testimony on this question was delivered by the parties themselves. Mr. White testified directly and circumstantially that he told Mr. Barber at their first interview that he was a merchant in Fort

Wayne, Ind., and that he did not want to be known in transactions on the Board of Trade because it might affect his credit, and that Barber told him that would be all right. That White need not be uneasy about exposure. That he told Barber in that interview directly that he did not want any of the property. That he knew it was simply gambling, but that he was not afraid to gamble, all he wanted was a fair show: That Barber said:

"Certainly I know that, I know your business. The "deals, of course, we will just settle them on the mar- "gins on the profits. That is just the way it gives a "profit or loss. That there was not one bushel in a "thousand or million that was actual business, we did not expect it—no one expected it." See p.p. 26, 28, 39, 56, 156, 167. On all said pages of the record White testifies positively that he told Barber he only intended to trade in differences; that he did not want to receive or deliver any thing, but to deal in margins. This testimony is no where controverted by Barber. Some of it he says he does not remember. During all that time from the fall of 1879 to April, 1882, the transactions of Barber in White's behalf, amounted to about $3,000,000, and not one bushel of grain or pound of lard or pork had been received by Barber and paid for either by White or himself, or delivered and the price thereof received, p. 148.

But Mr. Barber wholly fails, in his testimony, to show legitimate dealing. He does undertake to testify, on page 144 that the contracts were *bona fide* contracts for the sale and delivery of the wheat, but he states that he might afterwards see them and cancel the contracts, and on page 145 he states that it was his understanding that

White was not to advance the money to pay for any of the stuff. As between me and Mr. White, if I bought at one price and sold it at another, if there was a profit for him he received credit for that profit; if there was a loss he was credited with that loss. From that time on he knew nothing more about it. It thus appears that in $3,000,000 or more of trades, White never knew or suspected he had received or paid for one dollar's worth of property, nor did he know that he had sold or delivered any. This is Mr. Barber's own statement. But he undertakes to say when he sold for Mr. White, if the product declined he would go upon the Board and buy at the declined price, and the difference would be White's profit, and that was all White was cognizant of; but that he, Barber, would pretend to turn over his purchase to the party he had sold to, or if the purchase was made by the same party they would stand off the trades and such party would pay the difference. The same fictitious steps would be taken if the trades—or purchases and sales, were not between the same parties. The parties to the first sales, and the parties from whom Mr. Barber would buy would form a ring, and they would do what was called "ring the trades out." It was then managed thus: Barber had sold to A, and A had sold to B, and B to C, and C to Barber. They imagined the wheat delivered from A to B, and then from B to C, and then from C to Barber, and he could then deliver his wheat to A and thus they pretended all the wheat was delivered and paid for, and the transactions honest and *bona fide* purchases, and sales of grain consummated in each case by actual delivery, pp 60, 61, 62, 63, 143, 144, 145 and 146.

But the incomprehensible part of the matter is that men claiming honor and integrity could swear to such a

transaction as an actual delivery or an intention to actually deliver grain. I submit that such testimony can be accounted for only by the fact that it comes from the foggy hallucinations of the Board of Trade of Chicago. No wheat is delivered between any of the parties to the ring. Each purchase and each sale is wholly fictitious, and the parties seem to suppose that the multiplications of the fictions make them legitimate trans actions in the sale and actual delivery of grain. If the contract were made for a sale from Barber to A, to be delivered in thirty days, on the agreement that A should pay the margin of advance, or that Barber should pay the margin of loss, it is admitted that the transaction would be a deal in a difference and would be void. But I submit it is identically the same thing if A at the end of thirty days sells back the same amount at a lower or higher price, and the difference is paid, and the same is true in substance, however many deals there may be collected into the same ring. They are all carried on without warehouse receipt for the property, any without charges for storage, insurance, handling, or any of the indices incidental to actual property.

Their theory is that even if the first trade is illegal, the second or any number of subsequent trades make it legal; that one violation of the statute is vicious but that two or a hundred would be valid. Such a theory of morals, I repeat, may be satisfactory to the Chicago Board of Trade, but I submit it is not adapted to a court of justice. The testimony shows that there is not wheat enough to supply any considerable portion of the trades, if it had to be actually delivered upon each trade, so that it naturally results that the markets of the country are forestalled and controlled by gamblers and scalpers

that seldom own a bushel of grain or a pound of produce.

The numerous cases recently decided indicate a strong determination to break up this fictitious dealing, and to restrict dealers on the boards of trade, and to tolerate actual *bona fide* contracts only.

I insist it is immaterial what the actual character of the transactions were between Barber and the parties to whom he may have sold the 100,000 bushels of wheat in controversy. The real, and I think the only question at issue is the character of the contracts between the appellant and appellee by which authority was given to make these sales. It is impracticable to recite in this brief the testimony in the cause. But I refer the Court to White's testimony on the pp 26, 28, 29, 36, 56 and 156, and to Barber's testimony on pp 60, 61, 62, 63, 144, 145, 146, 147 and 148.

It appears from Mr. Barber's owm testimony that White never furnished and never was to furnish money to pay for produce nor to furnish produce to deliver in case of sales, except by the counter-purchases and sales above referred to; that in all their dealings White never knew of any produce being received or delivered on his behalf although transactions of over $3,000,000 had taken place for him; that Barber testifies that his own books were kept with White in the credits and debits of margins only, and in no case was he charged or credited with money paid for or received from produce. Barber does not deny that White told him distinctly that he did not want any property,but only to deal, and the accounts all show this was, so far as they were submitted to White,the nature of the transactions. White never knew

during all the time these dealings were going on the name of a single person the deals were made with. When property was bought or sold ostensibly for him, Barber *traded the trades* at his discretion simply keeping enough purchases or sales on his books each day to equal the amount White had ordered. These facts appear from Barber's own testimony. Several of the trades in controversy were thus changed or traded.

The following cases hold that such transactions between the broker and his customer were agreements between them to trade in differences, and void; that the actual nature of the deals with the parties on the board had nothing to do with it; that such deals were only means used by the broker to buy and sell to his customer; that a broker could not be an agent in such unlawful transactions, but was a principal and the transaction between him and his customer, void:

Flagg v. Baldwin, 38 New Jersey, Eq., 219.
The First National Bank of Lyons v. The Oskaloosa Packing Co., 66 Iowa, 41.
Pearce v. Foote, 113 Ill., 229.

In the last case it is said:

"Giving the contract the construction that the "plaintiff should reimburse the broker for any losses he "might sustain in optional or gambling contracts on the "Board of Trade, in consideration that if any gains "should be made in such dealings the broker would pay "the same to the plaintiff, and the plaintiff would pay "him a commission for his services. Still the trans- "action would be a mere wager and within the statute "which gives a remedy to recover back money paid "thereon."

I have found no case in which the controversy arose

between the principal and the broker employed to carry on gambling operations where the actual validity of the contracts made were held to validate the contract between the broker and his principal, except in those courts that have looked with favor upon such dealings in chances. I submit that in the later cases the strong current of opinion support the principles laid down in the three cases above cited.

But suppose it is material to reach the conclusion as a question of fact that each and every of the twelve contracts involved in this case were themselves gambling contracts without the reasonable expectation on the part of either Barber or the purchasers that the wheat would be delivered.

The testimony, I submit, is abundantly sufficient to establish the fact.

Barber admits that not one bushel in a thousand sold on the Board of Trade is ever delivered. Everyone of these purchasers must be presumed to know this fact. All the contracts made are in the same form these are and the purchasers, therefore, knew that they had but one chance in a thousand to get the wheat. Such a contract is within reasonable presumption a gambling contract.

But Barber testifies to the manner in which all the business is done, except by the large houses who manufacture or ship. This system of business I have already discussed and showed it was inherently a system of wagering. But the parties who testified they bought the wheat did not; nor could not state what they expected to do with it, whether it was for shipment, manufacture or resale. If they honestly bought it to get the wheat

they could have stated the purpose for which they wanted it. I submit this is a strong badge of the gambling character of said trades.

But when a better wheat was tendered to them, each and every one of them refused to accept it. When a person buys, if he actually buys because he wants the article he buys, the inherent value is the motive, and if the article is tendered, except that it is of a little better quality he will accept if he needs it.

But the testimony shows the wheat could be delivered under the contract till the close of the 31st of July. It also shows the same wheat on August 1st was worth but about 98c to $1 a bushel, only $1.08 in New York. It is easy to see the purchasers were after the margins and not the wheat.

The conclusion from all the testimony clearly is that the trades claimed to have been made were expected and intended to be closed by the payment of margins and not by the delivery of wheat and therefor wagers.

"Contracts for speculation in stocks upon margins, "when the broker and customer do not contemplate or "intend that the stock purchased or sold shall become "or be treated us the stock of the customer, but the real "transaction is a mere differences between prices—that "is in the payment of future profits or losses, as the "event may be, are contracts of wager dependent on "chance or casualty."

Flaag v. Baldwin, 38 New Jersey, Eq., 219.

SECOND.

Was the $6,700 in the Bank of British North America White's money? The testimony in the record shows that about the same time Barber and White settled,

during May and June, 1882, and while these sales were going on, White put up money with Barber, till the amount of $12,000 was furnished. This money was furnished for the particular purpose of being used as margins to protect these deals.

On p 141 Mr. Barber testifies that $13,000 were furnished him in May, June and July, 1882. That all these deals were protected by this money, and also some others.

On page 134 he states that the money was in the Merchants' bank of Canada which issued the marginal certificates; that his deposite was transferred from this bank to that of the Bank of British North America which was to honor and pay these certificates.

On page 135 he states these moneys of White were retained specially to protect these deals, "*and this was the balance of account that I retained for the deal in question.*"

Upon these very deposites these certificates were issued. See page 139.

These certificates were all cancelled before this suit was brought, and this same money left in the bank that was deposited there. Now Mr. Barber undertakes to testify that this money was his and not White's, because it had passed from White's possession to his, and was so deposited in the bank.

But on page 143 he states:

"Indirectly I should say I had used his money as I "had given him credit for the money he sent, and con- "sidered the money my own, and then used it to protect "the trades."

But Mr. White's testimony, on pages 152 and 153

fixes conclusively that this $6,700 in controversy was deposited in the Merchants' bank of Canada, which issued the certificates and that it was afterwards transferred to the bank—the complainant, Mr. White, testified to the contents of Mr. Barber's books showing exactly the identity of this money which Mr. Barber does not pretend to deny.

It is apparent from all this testimony that Mr. Barber testifies that the money is his only because it is on deposite in his name. This recklessness in swearing is another unfavorable circumstance bearing upon his character as a witness.

I insist the appellant has clearly shown:

First.—That the sales in controversy were wagers upon future prices, and to be settled only by the payment of differences, and void.

Second.—That all the contracts between the appellant and appellee were made for the purpose of dealing in margins and differences; that no authority was granted to the appallee to make any other kind of contracts for White; that all said contracts and authority, therefore, are gambling contracts, and void.

Third.—That the money so advanced to Barber has been clearly traced and indentified as White's money and that under the statute, section 132 of the criminal code of Illinois, White is entitled to recover it.

I have thus far discussed the testimony in the Chancery case, No. 351. The case preceding it on the docket of this court is a suit at law for part of these same advances and in my brief in that case I have discussed the legal questions fully.

These questions are identical with the questions of

law arising upon the record in this case.

By a reference to the record in case No. 350 it will appear that his Hon. Judge Blodget was of the opinion that no contract was within the statute of Illinois prohibiting gambling in produce, except such as were in the form of "puts" and "calls," and he so charged the jury in that case. He acted upon the same theory in this case in entering the decree for the appellee.

I have endeavored to show in my brief in the case No. 350, that the Court erred, and that argument of the legal questions is as applicable here as there, and although it is in form an argument on a record of a case on the law side of this Court, I apprehend it will be substantially sufficient here, and I, therefore, insert it in this brief in full as a part of my brief in this cause. It is as follows:

ARGUMENT.

First.—The first and principal question is whether the charge of the Court that "puts" and "calls" only were prohibited by the State, and that the contracts in question were valid and not prohibited by said statute, stated the law correctly.

The terms of section 130, chapter 38, of the statutes of Illinois is as follows.

"Whoever contracts to have or give himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than ten dollars nor more than one thousand dollars, or be confined in the county jail not exceeding one year, or both, and all such contracts made in violation of this section shall be considered gambling contracts and shall be void."

That what the Court in its charge, described as a "put" or "call" is clearly within the statute there can

perhaps, be no doubt.

To contract for an option is to contract for the privlage of buying or selling at a future day at a given price.

See Worcester. Such options are generally paid for in advance. Such contract is void and gives no legal right to the party holding it to make the purchase or sale. But is the statute limited to such operations? It is just as clearly an option whether the consideration for the right to buy or sell is paid in advance,or to be paid at the time the election is made. If A agrees with B in consideration,of $10 paid in cash that B may have the option sell him 1,000 bushels of wheat in ninety days for $1,000 it is void because the consideration of the trade depends upon the option of A, and B cannot enforce it.

If A should make the same contract with B, inconsideration of $10 to be paid at the end of ninety days it is equally an option and void. But suppose the contract in fact is that A agrees to sell B 1,000 bushels of wheat in ninety days at $1 per bushel, but that he has the right if the wheat is then worth $1.25 to pay the margin of the 25 per cent.,and thus liquidate his contract. Here the only difference is that the consideration given for the option to sell is paid at the end of the time instead of the beginning, each contract is equally an option, and within the statute. But such contracts are generally double instead of single. They contain two options instead of one. Such were the contracts in the case at law. A sells to B 1,000 bushels of wheat at ninety days upon the agreement that if wheat advances he shall not be compelled to deliver, but may pay the amount of the advance, and B, by the terms of the contract, is not bound to take the wheat if it declines, but

may pay the difference, and thus liquidate the contract. By such a contract, whether the wheat goes up or down, there is to be no delivery. There is a double option —one operating in favor of each party—and two clear violations of the statutes instead of one. Both options are strictly prohibited by the statute. The charge of his Hon. Judge Blodget, would have been a correct definition of what was prohibited by the statute if the statute had said: "Who ever contracts(for a price paid in advance) to have or give to himself an option." But the statute forbids the contract for an option equally whether the consideration for it is fixed and paid for it in advance or to be fixed by future events, and then paid. Those options that are paid for at once are much less dangerous than such as are to be determined by future events and then paid for. The hope of the gambler is much more stimulated by the latter than the former. All the considerations whether of morals or public policy, is for the same reasons opposed to either of said classes of options, and I submit they are both equally void under the contract.

But the question still arises whether such a contract, in substance void, but by the precaution and ingenuity, parties entered into in the form of an absolute agreement to sell or buy is absolutely valid, and that neither party to it can be allowed to prove the actual understanding to avoid it.

The proposition given to the jury by the Court in its charges, was that such contract, if in form valid, could not be attacked by proof of the actual agreement between the parties. If it was in terms a contract to buy or sell wheat to be delivered at a future day, it was valid and could be enforced.

This case was tried in the court below before the opinion of this Court in Irwin v. Millair, 110 U. S., 499, was published.

This Court, in deciding said cause copies from Benjamin on Sales, with approval, the following statement:

"* * that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods nor any other means of getting them than to go into market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller, and the price to be paid by the buyer; and, if under the guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void."

In this same case it is held that if the broker is privy to the unlawful designs of the parties he is *particeps criminus*, and cannot recover for services rendered or losses incurred. It is also held that such contracts are held to be void in this country as against public policy.

But the true meaning of this statute is conclusively settled by the courts of the state of Illinois.

In the case of Tenney v. Foote, 95 Ill., 99, this question was directly decided. The report says "the dealings were in form purchases and sales of grain for future delivery."

The contract between Foote and his broker was that such purchases and sales should be settled by the payment of differences, and not by the delivery and payment for the grain. Such settlements were made and differences in losses paid by the brokers to the amount of $22,000, for $20,000 of which Foote assigned to them pa-

per and guaranteed the payment of it. This was sold to Tenney, and he sued Foote on the guarantee. The Court held that because the contract authorized dealing in differences it was void and the guarantee without consideration.

4 Bradnell's Rep., 594.

The question is also thus decided in Pickering v. Case, 79 Ill., 328. On p. 330 the Court says:

"What the law does prohibit and what is deemed detrimental to the general welfare is speculating in differences in market values. The alleged contracts for August and September come within this distinction. No grain was ever bought and paid for; nor do we think it was ever expected any would be called for, or that any would have been delivered, had demand been made. What were these but 'optional contracts' in the most objectionable sense—that is the seller had the privilege of delivering or not delivering, and the buyer the privilege of calling or not calling for the grain just as they choose, on the maturity of the contracts, they were to be filled by adjusting the differences in the market values. Being in the nature of gambling transactions the law will tolerate no such contracts."

These transactions, as I have said, are in substance double "puts" and "calls" instead of single ones. The Courts of Illinois have uniformly followed these decisions, and they are now the settled law of that State. See McCormick v. Nichols, Chicago Legal News, October 2, 1886, also reported in 19 Bradnell.

Pearce v. Foote, decided by the Supreme Court of Illinois, February 7, 1885, held that Foote could recover the money collected by a voluntary assignee of one of the four notes assigned to his brokers to pay the losses they had incurred for him settling difference in dealing for him on the Board of Trade.

Chicago Legal News, July 11, 1885.
Coffman v. Young, Chicago Legal News, July 17, 1886.

It was held in this case that a charge that although the contracts were in form for the purchase or sale of grain for future delivery, yet if the parties understood that said contracts should be settled by paying the difference in the market price, they were within the statute, and void.

Beveridge v. Hernett, 8 Bradwell, 467,
Lyon v. Culbertson, 83 Ill., 33,
Gilbert v. Cook, 2 Chicago Legal News, 208.
Calderwood v. McRea, 11 Bradnell, 543.

A most thorough discussion of the statute and the gambling contracts under it, by the Supreme Court of Illinois, appears in Pearce v. Foote, 113 Ill., 228. The opinions were delivered long after this trial was had in the court below. Foote had contracted with Hooker & Co., who were brokers and members of the board of trade, to buy and sell for him on the board, and settle said trades, paying and collecting the differences in prices. Transactions of that character had been made by Hooker & Co., in their own names, but for Foote, till his losses were over $22,000. Both the contract employing the brokers, and their transactions were precisely White's contract with Barber, and the latter's dealings on the board in the case at bar. Foote settled the balance of the account by paying $2,000 cash, and and assigning four notes of $5,000 each to Hooker & Co., and the suit was to recover back the amount collected on one of said notes or perhaps its value. Foote recovered judgment for the amount of the note and interest which the Supreme Court affirmed. The Court says:

"The true idea of an option is what is called in the peculiar language of the dealers "puts" and "calls." A "put" is defined to be the privilege of delivering or not delivering the thing sold, and a "call" is defined to be the privilege of calling for or not calling for the thing

bought. Optional contracts in this sense are usually settled by adjusting market values as the party having the "option," may elect. It is simply a mode adopted for speculating in differences in market values of grain or other commodities. It must have been in this sense the term "option" is used in the statute. Such a contract is obviously fictitious, having none of the elements of good faith and is defined by statute as a "gambling contract." Fictitious purchases or sales such as were in the contemplation of the parties were as nothing, and it is a matter of no consequences where it is pretended they were made, whether on the board of trade or elsewhere. It would have been quite as well and would have conformed as nearly to the contract of Hooker & Co, had they simply entered upon their books, they had made such purchases or sales on behalf of plaintiff without going upon the board of trade, and claiming they had made such purchases and sales, and on returning made such entries. Betting upon the market could be done just as well in that way as in any other. It needs no illustration to make it apparent, the contract between plaintiff and Hooker & Co., as the trial court must have found it from the evidence, comes exactly within the meaning of section 130 of the criminal code, that declares 'whoever contracts to have or give to himself or another the option to sell or buy at a future time, any grain or other commodity, shall be subject to a fine or imprisonment, and all contracts made in violation of this section shall be considered gambling contracts, and shall be void.' It is sure this statute forbids any one to contract, to have or to give to himself, or to contract to give to another the privilege to deal in options. This is precisely what Hooker & Co. did. They contracted to give to the plaintiff the privilege to deal in options and settle with them upon differences as indicated or determined by the fluctuations of the market. This is one of the offences against which the statute is leveled."

I have made this extensive extract because it covers the questions in controversy. The contract is the same as White and Barber made; the purpose was the same; the form of the transactions was the same. The only difference is that in that case Hooker & Co., had paid the losses and Foote had repaid them. The whole transaction was closed up, and the suit was to recover back what had been paid, while in this case before Barber paid

over the money, White repudiated the transactions and notified Barber not to pay over the money in his hands, and this suit is to recover it.

It is apparent from all the cases growing out of transactions on the Chicago Board of Trade that there has been a continued struggle on the part of the gamblers in that body to get the courts to hold that the statute was leveled only against "puts" and "calls" as the court below defined them, and to exclude the operation of the statute from such transactions as were in form contracts to buy or sell for future delivery. The question never seems to have been settled in all its features till the decision in Pearce v. Foote, *supra*. The Illinois courts only followed the current of modern decisions on this question.

North v. Phillips, 89 Pa., 250, 10 Weekly Notes of Cases 109 and 112;
Barnard v. Backhaus, 52 Wis., 593;
Cobb v. Prell, 15 Federal Rep., 774;
Grizwood v. Blane, 11 Com. Bench Rep., 538;
Brua's Appeal, 55 Pa. State, 298;
Kirkpatrick v. Bonsall, 72 Pa. State, 155;
Stewart v. Danner, decided by the Court of Appeals of Maryland, reported in Chicago Legal News of August 22, 1886;
The First National Bank of Lyons v. The Oskaloosa Packing Company, 66 Iowa, 41;
Gregory v. Wattona, 58 Iowa, 711;
Murray v. Ocheltree, 59 Iowa, 435.

For a complete definition of "puts," "calls," "straddles," "options" and "futures," I refer to Deney on contracts for future delivery and commercial wagers pp. 26, 27 and 28.

The author deems all such contracts valid if honestly made and he defines such of them at wagers thus:

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"Where the parties to a contract in the form of a sale agree expressly or by implication at the time it is made that the contract is not to be enforced, that no delivery is to be made, but the contract is to be settled by the payment of the difference between the contract price and the market price at a given time in the future; such a transaction is a wager; the form of the sale is a mere cover; the real intention being to bet upon the market price at some future time; the sum wagered being the difference between the two prices as that may subsequently appear."

Upon these authorities I submit, the Court below erred in charging the jury that "puts" and "calls" were the only contracts within the statute against wagers; and it was also error to tell the jury that unless they found the transactions in controversy "puts" and "calls" as described, they should find for the defendant. It appears to be proper to consider two additional questions as follows:

First.—Whether the real matter in issue was not the validity of the contract between White and Barber, and whether the dealings between them, were not wagers.

Second.—If such dealings were wagers, could White recover, under the circumstances the money he advanced to Barber?

FIRST:

I submit that the character of the contracts made on the Board of Trade by the defendant in error, although they were intended for the plaintiff in error were wholly

immaterial. There is no testimony in the record that tends to show that the parties dealt with were ever known to White till two of them appeared as witnesses on the trial. There is no testimony tending to show that White ever knew that said contracts differed from what he had authorized Barber to make. There is no testimony tending to show that, in all the dealings for White on the board, amounting to nearly $4,000,000, Barber ever communicated to White the name of a single person contracted with, or a single contract made, or that there was a bushel of grain, or pound of produce received or delivered. White's intention was to bet on the fluctuations of the market; the terms of the agreement between him and Barber contemplated such betting and nothing more. Barber's authority was to bet for him and nothing more, and White was never notified until long after these deals in controversy were made that White was bound to deliver or receive any property whatever. The testimony affirmatively showed that all the profits and losses previously made and lost were differences and not values. If these contracts were valid contracts they were made without authority, and White never authorized Barber to pay the money in controversy on them.

I submit that White never ratified the sales; that the litigation White was somewhat identified with was to break the force of the board in fixing the settling price or the amount of margins to be paid; that the futile attempt to tender red wheat made by Barber without any protest by White is no ratification or adoption by White of a contract made by Barber in his own name and upon his own responsibility. White had no grain to deliver, never had, and never expected to have, and Barber knew it. The grain did not exist as every one

on the board or acquainted with the situation knew. To say that White, by anything he did or said, intended to adopt said contracts with the understanding that they were valid and required the delivery of the wheat is wholly without proof or testimony tending to prove it.

I submit, therefore, that the money was placed by White in Barber's hands to pay out to others on fictitious deals, and if that was the understanding between them the law fixes upon them the consequences and their whole transactions, contracts and negotiations, were void. White authorized these sales as options or margins, and kept putting up margins in Barber's hands till the latter held nearly $12,000 of White's money. The parties were exactly in the situation covered by the statute. Barber had contracted to give to White the option to sell wheat at a future time. Such are the terms of the statute and such were the terms of their contract.

If it had not been for the statute White would have had the right to sell the wheat at the future time or to collect or pay the difference in price. This right was secured to him by his contract with Barber. But Barber's undertaking was void by the statute, and his contracts with others to effectuate it for White were also void as to White, and gave Barber no lawful authority to part with White's money. It was in this situation that White notified him not to pay it over because he repudiated the whole transaction as he had a right to do. This theory is fully sustained by the Supreme Court of Illinois in Pearce v. Foote, 113 Ill., 228. The transaction of Foote with Hooker & Co., his brokers, has been stated above. It was almost identical with that between the parties here, and the Court held it was a gambling contract, and the note passed to Hooker & Co.

in payment for losses incurred by them, could be recovered back. The Court, in passing upon the contract between Foote and his brokers, says:

"Fictitious purchases or sales, such as were in the contemplation of the parties, were as nothing; and it is a matter of no consequence where it is pretended they were made, whether on the Board of Trade or elsewhere. It would have been quite as well, and would have conformed as nearly to the contract of Hooker & Co, had they entered upon their books they had made such purchases or sales on behalf of plaintiff, without going on the Board of Trade and claiming they had made such purchases and sales, and on returning made such entries: 'Betting on the market,' could have been done just as well in that way as in any other. It needs no illustration to make it apparent the contract between plaintiff and Hooker & Co. comes within the meaning of section 130 of the criminal code that declares 'whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity,' etc. It is seen this statute forbids anyone to contract to have or give to himself, or to contract to give to another the privilege to deal in options. That is what Hooker & Co. did. They contracted to give to the plaintiff the privilege to deal in options and settle with them upon differences as indicated or determined by the market. This is one of the offenses against which the statute is leveled."

The case above cited of the First National Bank of Lyons v. The Oskaloosa Packing Company, 66 Iowa, 41, proceeds upon the same theory. There was no evidence in that case showing that the parties who sold the "ribs" understood that they were not to be delivered, but differences paid. The Court says:

"But we do no deem it necessary to enquire further as to these unknown contractors. This is an action upon a promisory note given to Siles, Goldy & McMahon, which they claimed was to reimburse them for margins advanced for the defendant. If they knew that this was an illegal and gambling transaction, and understood that it was to be settled without any delivery of the ribs, no recovery can be had upon the note. They stand in no better position than mere stake-holders in a gambling transaction who loan money to one of the gamblers to enable him to make his bet upon the turn of a card, the speed of a horse, or the success of a candidate for office."

The Court then considered the evidence which was confined wholly to the contract between the brokers and the packing company and held it sufficient to show participation on the part of the brokers with "gambling transactions." The case can have no other construction than holding that if the contract with the broker is an employment to deal for his principal in margins it is a gambling contract under which the broker can acquire no right to be reimbursed for his losses. This question was thoroughly discussed in Flag v. Baldwin, 38 N. J., Eq. 219. It was an action by a stock broker to foreclose a mortgage given to him to cover certain losses in speculations in stocks upon margins. Baldwin, the broker, had received certain sums in cash, and the security sought to be foreclosed to keep good the margins on stocks to be bought and sold for his customers. As in the case at bar, the transactions were conducted in Baldwin's name, and an account of the profits and losses was kept with the Flags. In a suit to foreclose the mortgage it appeared that the broker had lost the sum of $10,-909.50, and the question was whether it could be recovered. It affirmatively appeared that the broker did actually buy and sell the stocks, and the margins of profits and losses were charged to Flag's account. On page 232 the Court says:

"In the able opinion below much stress is laid on the fact that the purchases and sales for this account were actually made by respondent. He so testifies and produces vouchers in corroboration of his statement. That the transactions were very large, and upon a petty advance is not sufficient, probably, to permit us to reject this positive statement. But assuming it to be true that the respondent actually purchased or sold every share of stock in this account, I am unable to perceive how the circumstance affect the conclusion in this case. If respondent was the mere agent of the appellants in transactions with third parties, there

might be some significance attached to it. But such is not, as we have seen, the real nature of the relation between the parties. They were dealing, as to this transaction, as principals, and it was a matter of indifference whether the respondent owned or bought the stock he agreed to carry."

The case of Cobb v. Prell, 5 McCreary, 80, is in point. There was no evidence that the contracts the broker made with others were margins, but the case was decided on the testimony that showed that the understanding between the parties was that they should be deals in margins. If this be the true theory of the case as presented by the testimony in the court below, the charge was clearly erroneous. It put the case to the jury on the character of the contracts Barber had made with the members of the Board of Trade instead of directing the jury that the character and dealings between White and Barber was the main question, and if they were in the nature of wagers, the plaintiff could recover.

SECOND.

I insist that White had the right to recover back the money although it had been advanced to Barber to be invested in gambling contracts.

This suit was instituted on May, 18th 1883. On May, 10th 1883, the plaintiff in error served on the defendant the notice to pay over the money to him, the plaintiff, and not to pay it over to any other person, because said sales were illegal and void.

I claim that White had the clear right to recover this money at common law, because it had not been applied or paid over. Upon the theory the Court below tried the case, Barber was a mere stake-holder between White and the parties to whom the sales were made, and White had the right, at any time before it was paid

over, to change his purposes and demand the money. Love v. Harvey, 114 Mass., 80, is in point. The money bet was demanded of the stake-holder after the bet was lost, yet he paid it over, and a suit to recover it from the other party to the bet was sustained.

His Hon., Justice Gray, in deciding that case says:

"The defendant having received the money from the stake-holder after notice from the plaintiff not to pay it over, was liable to the plaintiff under the count for money had and received."

At the common law, if White had paid over the money, or Barber had done so by his authority, the law, perhaps, would have left him where he voluntarily placed himself, but his position was, in legal contemplation, both an illegal and immoral one, from which he had the right to withdraw at any time, and to refuse to part with his money.

But section 132 of the criminal code of Illinois which is set out in the following extract from Pearce v. Foote, 113 Ill., 237, expressly gives the right of action.

The following is extracted from the opinion in that case:

"Assuming, then, as must be done, the facts were correctly found by the trial Court, the contract between plaintiff and Hooker & Co., was in law a gambling contract, and hence void, the question arises on the other branch of the case, whether plaintiff, either at common law or under the statute of this State, can recover that which he paid Hooker & Co. as money or property lost in gambling transactions from the defendant in whose hands the specific property is found. As the solution of this question depends upon the construction that is to be given to the statute of this State on this subject, no investigation will be made as to what the common law was in such cases. So much of section 132 of the criminal code as has any application to the point being considered, is as follows: 'Any person who * * * by any wager or bet upon any * * * contingent event loose to any person so * * * betting, any sum of money or other valuable thing, (amounting in the whole to the sum of $10,) and shall pay the same or any part thereof, the person so loosing and paying or delivering the

same, shall be at liberty to sue for, and recover, the goods, moneys or other valuable thing so lost and paid or delivered, or any part thereof, or the full value of the same, by an action of * * * trover * * from the winner thereof, with costs in any court of competent jurisdiction.' It is said, if it shall be conceded the contract between plaintiff and Hooker & Co. was a gambling contract within the contemplation of the statute, this provision of section 132 does not apply to, nor does it authorize an action against Hooker & Co. for the simple reason they had not now any money or valuable thing from plaintiff, upon any gambling transaction; or more tersely stated, the argument is, the note in controversy was not paid upon a bet or gambling transaction to the winner of such bet.

"The position taken can hardly be maintained. The agreement, as the trial court was authorized to find it, is that Hooker & Co. contracted to give plaintiff the privilege to deal in options with or through them, and if there was a loss, plaintiff was to pay it to them, and if there was a gain Hooker & Co. were to pay it to plaintiff, and for their services they were to be paid a commission. The suggestion that Hooker & Co. merely acted as the agents for plaintiff in these unlawfull transactions may be rejected at once as having nothing in its support. There is, and can be, no such thing as agency in the perpetration of crimes or misdemeanors, or, indeed, in the doing of any unlawful act. All persons actively participating are principals. Treating all parties engaged as principals it is immaterial to which one the money or property lost was, in fact, payed or delivered—whether to Hooker & Co. or to any of the parties on the Board of Traid with whom they may have made ficticious contracts, and lost—and paying to either principal, is in law, paying to the winner. But aside from this view the contract in express terms provides the losses, if any, should be paid to Hooker & Co., and not to the person with whom they might have had gambling contracts on the Board of Traid or elsewhere, and the money and note was so paid to Hoooker & Co., as the contract provided."

It was held that under this section of the statute a looser in gambling could recover his losses from the winner, and White and Barber were, I insist, exactly in that situation.

The ~~plaintiff in error~~ appellant respectfully asks the judgment in this case be reversed, by

LINDLEY M. NINDE.
His Solicitor.

123-392

SUPREME COURT U.S.
FILED.
NOV 15 1887
JAMES R. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1887.

No. 73.

JAMES B. WHITE,
Appellant,
vs.
GEO. M. BARBER,
Appellee.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT OF THOMAS DENT, FOR THE APPELLEE.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

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This was a suit in chancery, which was initiated by the filing in a state court, on the 24th day of July, 1883, of a bill of interpleader, wherein the Bank of British North America was complainant, and George M. Barber and James B. White, appellant and appellee in the present record, were defendants. They were called upon to interplead, to have it determined as between them which was entitled to the sum of $6,700, which stood to the credit of said Barber in the Bank of British North America. After the cause had been removed to the Federal court, said Barber and White appeared and answered the bill, each claiming the money. Thereafter the Bank of British North America paid the fund into the Circuit court

for the Northern District of Illinois, wherein the suit was pending, and the Bank of British North America was dismissed from the litigation, leaving the contest to the parties to this appeal.

On the hearing of the cause, the Circuit court found that appellee, Barber, was entitled to the money, and an appeal was thereupon taken by James B. White.

No. 72 on the present docket is a prototype of this case in all essential features. That was a suit at law, setting up the claim of Mr. White for not only the amount of the moneys claimed by him herein, but also for all the moneys which he deposited with appellee, Barber, to meet certain losses which had been incurred by Barber as his agent, under contracts made by Barber with fellow-members of the Board of Trade of the city of Chicago. The right of Barber to pay the moneys over to satisfy the damages for which he had become responsible under said contracts, was attempted to be withdrawn by notice from White, the principal, to Barber, the agent or broker; the notice (printed record, 24), claiming that the contracts were illegal and void. The action at law, No. 72 above mentioned, brought out vividly and directly or by inference nearly all the facts which appear in the present record. Therefore, the argument in behalf of Mr. Barber in that case has dealt with the facts to such an extent that it will be sufficient to give an outine of them here, as illustrating the points of law which must govern the case.

In the case at law it has been necessary to consider a question or two, and perhaps strictly but one question, which seems to be easy of disposition, especially so on equitable considerations; and if the court shall be satisfied that Mr. White has no standing in that case, the decree in

the present case should be affirmed; for he is here trying, through the aid of a court of equity, to contravene the verdict and judgment in that case. If in that there is, as above supposed, manifest equity on the side of appellee, Barber, it should not be denied him here, but should be recognized by affirming the decree in this case. The appellant herein failed in the suit at law to establish his right to have refunded to him any of the moneys which he had advanced to the appellee, and he should abide by the judgment in that case. A court of equity will not lend its aid to give him the money.

In answering the bill of interpleader he undertakes to show that the sum of $6,700, in controversy herein, "is part of a larger sum placed by him in the hands of" appellee, Barber, to be used by "Barber as margins in gambling contracts," which "Barber was to make for White on the Board of Trade in the city of Chicago." White further undertakes, also, to show that Barber, in pursuance of such employment, in April, May, and June, 1882, made certain gambling contracts with certain members of said Board of Trade, which contracts were ostensibly for the sale of certain quantities of wheat by Barber to said members, to be delivered at any time in July, 1882, at the option of "*the pretended purchasers*," but that really said pretended contracts were a mere form and cover, and the real intention of all parties was to settle said pretended contracts by the payment of the difference between the price for which the wheat was sold and the market price of the same if delivery should be called. (Printed Rec., 6.)

In no respect does the evidence sustain the appellant as to the matters so stated in his answer. His own evidence, when applied to the contracts, on account of which he advanced the money in question, shows that such contracts

were not gambling contracts, but were contracts which required the delivery of the wheat, and under which tenders of wheat were made, etc., etc. The theory that delivery was provided for at the option of the *purchasers* has no support whatever. The testimony, as a whole, leaves no question that the contracts which, appellee, Barber, made for the sale of the 100,000 bushels were as between himself and the buyers real contracts, and subject to no infirmity. Anticipating slightly the legal points to be made herein, *Higgins* v. *McCrea*, 116 U. S., 671, effectually disposes of White's claims, not only in the said action at law, but also in this case.

A plain and fair statement of the case is made in the ANSWER OF BARBER TO THE BILL OF INTERPLEADER (Printed Rec., 7–15). It shows that when the moneys were deposited by him as margins, they were no longer subject to be withdrawn without settlement with the other parties to the contracts, and action under the rules of the Board of Trade; that he obeyed White's orders in making the contracts; that tender of delivery was made; that a committee of the Board of Trade decided what was the fair market value of the grain on the day when it should have been delivered; that White, being dissatisfied with the action of the committee, caused the regularity of its action to be tested by a suit in chancery; that the contest proved to be unavailing, and that Barber was afterwards obliged to pay the damages to avoid expulsion from the Board of Trade, membership in which was of greater value than $10,000, etc., etc. The answer affirms the legality of the contracts, etc., etc.

All the evidence, together with the finding and judgment in favor of Barber, in the aforesaid suit at law, is spread out in this record, and White asks a review of it,

from which Barber does not shrink. In addition, Barber's evidence supporting his answer herein is presented in the record. (Printed Rec., 129–151.) It shows, among other things, that White has no right to claim the $6,700 as trust moneys because they were Barber's own moneys from first to last, and, as margins could not be withdrawn until the rules of the Board of Trade as to margins (as to which see printed record, 126–9), had been complied with.

The record also gives evidence of White in this chancery case (Printed Rec., 151–168), one object of which additional evidence by him seems to be to trace the margin moneys under Barber's contracts for him into the Bank of British North America, by which the bill of interpleader was filed. Another purpose seems to have been to restate White's theory as to the contracts, and to make such theory more emphatic than he found he could make it before the jury. But it seems unnecessary to give a review of this evidence, which appears to be largely an afterthought. White fails to support any important element of his claim to these moneys. Not only has he no preponderance of evidence, but the weight of evidence is against him in every important feature of his claim.

The finding of the jury in the action at law of *White* v. *Barber* determined that these contracts were not puts and calls or privileges, and were not, in fact, gambling contracts.

This finding accorded with the facts presented by the present record. Let us observe some of these facts in a general outline. White, as he admits, required Barber, in becoming his commission merchant, to trade with responsible parties. (Printed Rec., 45.) He gave his di-

rections to Barber either to buy or sell, and left it to Barber to put the contracts in form. (*Ib.*, 47, and for samples of the orders see Printed Rec., 135–8.) The business of buying and selling was to be done on the Board of Trade, and Barber obeyed White's orders. (*Ib.*, 48.) White controlled the trades, and they could not be closed out by Barber until White so directed; and Barber was to observe the rules of the Board of Trade. (*Ib.*, 49, 50.) White knew that Barber, as a member of the Board of Trade, making such contracts on the Board for White, would be obliged to observe these rules. White told Barber when to cover or to close trades, and Barber observed his orders. (*Ib.*, 50.) White acted on his own judgment in making the sales of wheat for July delivery. (*Ib.*, 51.) When the contracts for those sales matured, he approved of a tender being made. (*Ib.*, 38–9.) He reaffirmed such approval on various occasions thereafter. His telegram of August 5, 1882, directed Barber not to cancel the trades, and added: "My attorneys here believe the "tender we made is good, and can be enforced." (Printed Rec., 76.) Later, by his letter of August 15, 1882, he speaks of having consulted his attorney on the subject of these sales, and of having provided such attorney with the rules of the Board of Trade, and advised Barber that such attorney, after careful deliberation, concluded that the delivery which Barber had tendered was good and binding on the buyers, and that they (meaning himself and Barber) could collect the difference in court, etc. (Printed Rec., 121.) The fact of the tender being made with the approval of White is also shown by the testimony of divers other witnesses. Mr. Barber himself testified about it (Printed Rec. 91–2). Mr. Maltman, who was the agent for Mr. White, testified that Barber, desiring to

maintain his reputation as a prompt and reliable business man, was unwilling to default on these contracts, but that White insisted he should do so. (Printed Rec., 107.) Barber thought it would hurt his reputation on the Board of Trade to default. But White knew of a rule of the Board of Trade, under which a committee could be appointed to determine what was a fair price for property to be delivered (Printed Rec., 78–80), and he was willing to leave it to the committee, and desired that Barber should default, so that it would be left to the committee, and he, White, would abide by the decision of the committee (Printed Rec., 108). On the 10th of June, 1882, forecasting a probable result of having caused Barber to make these contracts, White wrote to Maltman: "All I ask is to hold the trade till I "consent to close it out, and I assure you, as previously "stated, neither you, Mr. Barber, or any other party shall "lose a dollar." (Printed Rec., 122–3.) On the 29th of the same month White indicated that, by the end of July, the wheat, red winter, which would come to Chicago, would change the position of affairs (Printed Rec., 124). This indicated his expectation that a tender might be made when the contract should mature, or during the month of July. White was of the opinion that the action of a committee which could be appointed under the rules to determine what was a fair price of the grain, would be advantageous to him. On the 18th of July, 1882, he referred to the rule upon this subject as being a valuable rule. (Printed Rec., 120.) White, in conversations with Mr. Maltman and Mr. Morcum, approved of the tender. (Printed Rec., 108, 112.) White went with Mr. Maltman to A. M. Wright, one of the commission merchants who had interests like those of Mr. Barber, and who took a conspicuous part in the matter of the settlement of dam-

ages under contracts for July wheat. (Printed Rec., 108.) This had reference to contesting the settlement price fixed by the committee. After the committee had been appointed, and had fixed upon the price, $1.35 per bushel, Mr. White was advised of the action of the committee, and wrote September 5th to Mr. Maltman:

"We will now go into court and see if this wonderful Chicago (clique, meaning,) can manipulate a court" (Printed Record, 109.)

It was in pursuance of the desire of Mr. White to have a bill filed to set aside the award of the committee, that a bill in chancery was filed in the name of *Mr. Barber* v. *Board of Trade.* (Printed Record, 77.) Under that bill an injunction was obtained to prevent the expulsion of Barber for not having complied with the contracts under consideration, which injunction remained in force until a certain bill in favor of said A. M. Wright, which was made a test case, was determined by the Supreme court of Illinois. (See Printed Record, 88, as to the order under which the bill of Barber was made to abide the result of the bill in favor of Mr. Wright; and for the opinion of the Supreme court of Illinois in that matter, see *Wright* v. *Board of Trade*, 15th Chicago Legal News, 239.)

The court proceedings thus failing to give any relief to Mr. White, he was yet silent for a time as to any objection whatever to the obligations which he had assumed. But, on the 2d of April, 1883, he served a notice upon Mr. Barber that he claimed that the contracts were illegal and void. (Printed Record, 24.). On the 20th of April, 1883, Barber having been notified of complaints made against him before the board of directors of the Board of Trade under the rules of the Board, providing for the hearing of complaints, and for suspension or expulsion in

case of not promptly complying with contracts, etc., notified White of the state of the case, and asked him if he, White, could protect Barber in any way? (Printed Record, 114.) On the 24th of April, 1883, Barber paid out all the residue of the moneys necessary to satisfy the damages, and thereby relieved himself from suspension from the Board of Trade, which suspension was imminent. (See Printed Record, 115–118.) There was really no alternative for Barber but to pay the money, or lose his livelihood, and an amount in the value of his membership in the Board of Trade more than equal to the amount in controversy herein. He had acted strictly within the instructions which White had given him, and was entitled to indemnity. White had given such indemnity in dollars and cents merely in leaving the moneys in his, Barber's, hands, for the express purpose of having him pay such damages, if any, as the committee of the Board of Trade should find to be due. It was expected by White, at the time the matter was arranged for such indemnity, to wit: on the 30th of October, 1882, that something might be gained to White by the suit in chancery, questioning the decision of the committee fixing the settling price. That suit was prosecuted through a test case as far as White chose to have it prosecuted, and ultimated in the before cited decision of the Supreme court of Illinois in *Wright* v. *Board of Trade*, *supra*, and thus all legal resources, and every guard, as against the enforcement of the rights of purchasers under these contracts, seemed to be closed. What could Barber do in such a case as a man of honor but to pay over the money in satisfaction of the damages? Would a court of equity deny him this right?

After Barber had paid out those moneys there was not

left any trace of right on the part of White to go to the Bank, as he did, and claim the $6,700 to which this suit relates. Such claim was an unfair intermeddling, and the Bank ought so to have treated it.

In arraying the facts as above, attention has been called more especially to the evidence on the part of White himself, than to the evidence on the part of Barber. The evidence offered by White did not itself turn the scale in his favor. It did not sustain the answer filed by him as presenting his claim to these moneys. It, in fact, overthrew that claim, and negatived the idea that the contracts made by Barber under his orders were gambling contracts. It showed that the contracts were not contracts for the sale of wheat to Barber, as the answer suggests (Orig. Rec., 12), but that they were contracts for the sale of wheat by him. It also showed that the contracts were real and not merely pretended contracts.

If the evidence on the part of Barber should be further collated it would go to confirm, in the strongest manner, all that has been said in favor of the regularity and legality of the contracts, and would leave no room for question. It would fully confirm the answer of Mr. Barber (Printed Rec., 8–15), in every particular. That answer states the case on the part of Barber, and is most fully supported by the evidence. The equities in favor of Barber, as stated in his said answer, will, undoubtedly, commend themselves to the members of this court. As the answer states, page 29 original record, White caused Barber to make these contracts and to become bound for the performance of the same, and made it necessary for Barber to put up margins and security, and thus place it out of his (Barber's) power to control the margins and

security in any other way than according to the rules of the Board of Trade. Obedience to White's orders involved Barber and made him amenable to discipline by, or suspension or expulsion from, said Board. White, therefore, could not legally nor equitably revoke Barber's authority to make settlement of the contracts, or pay over the damages when it became necessary to do so. As further stated in said answer, the rules of the Board of Trade were necessary to be considered in the matter, and even if the trades had not been legal, or if any of the provisions of the rules operated partially, or did not serve to keep the damages down to the most equitable point, yet, under the circumstances of the case, it became necessary for Barber to discharge his obligations under said rules, which obligations he had incurred at White's instance. It was the right of Barber to pay the damages or differences on default under these contracts. Such damages then became due according to the rules of the Board of Trade. Such right enured to Barber when the contracts were entered into at White's instance, and thereafter there was no time when White had any right or authority to revoke Barber's power to pay over the moneys when it became necessary to do so under said rules. (Orig. Rec., 30–1).

Other equities are also shown in the answer of Barber, as, for example, that White, while taking the profits of a series of trades, is, in this case, attempting to repudiate the contracts which resulted in losses, thereby failing to do equity, and not coming into a court of equity with clean hands. Upon these various matters it does not seem necessary to dwell. They will readily occur to the court in considering the course of dealing, and the situation in which Barber was placed.

Upon one point only, before passing to a statement of

some points of law and the citation of authorities in support of the same, brief observation may be made. White wishes to claim power on his part to re-collect the moneys from Barber, under the notice of the 2d of April, 1883, after Barber's liability to pay the damages had become in every way fixed. Such claim does not take into account any of the proceedings in the way of tender, the calling of a committee of the Board of Trade to adjust prices, nor the prosecution of the test case of *Wright* v. *Board of Trade*, *supra*, but White merely says in his said notice that he claims the contracts to be illegal and void. Now, an examination of the evidence will show that, practically, the money had been paid over by Barber prior to April 2, 1883. Suppose it to have been put up by him as margins, as White claims in this case, it became, at once, subject to the rules of the Board of Trade; as to which rules in regard to margins, see printed record, 126–9. This was the same as the payment of the moneys by Barber at the time they were put up by him as margins, which time ante-dated said notice of April 2, 1883. When deposited as margins the $6,700 in controversy herein may be said to have been paid over by Barber, because he lost personal control of the money; and this was before he received White's notice of countermand. Upon this matter, it would, perhaps, be worth while to dwell, but for the fact that the case is otherwise so clearly with the decree awarding this money to Barber, the affirmance of which decree he now asks.

I.

The plaintiff's testimony considered alone, and saying nothing at present of that on the part of the defendant, which is strong and clear, may be divided into two parts, one relating directly to a series of transactions not directly involved herein, but brought in for illustration, and the other relating to the contracts under special consideration in this case. It would be proper to consider the latter only, but the evidence in regard to the earlier or distinguishable transactions may be supposed to have been received for the purpose of throwing light on the character of the dealings as a whole in which White was principal and Barber was agent. The transactions extended over a period beginning about December, 1879, and terminating in the year 1882. It is by no means clear that White's testimony even tended to show that any part of the transactions between himself and Barber was of an illegal character under the statute of Illinois. (Rev. Stat. Ill., 1 S. & C., 791, Ch. 38, Sec. 178, referring to gambling in grain.) In fact, the testimony of White in reference to the contracts other than the ones to be specially considered in this case, especially when viewed in connection with his admissions *as to what occurred in carrying out the transactions*, tended to show, and perhaps it may be fairly said does really show, that the transactions were legal, and not such as are condemned by that statute. He admits, for example, that Barber was to deal only with responsible parties; that Barber was to conduct his transactions upon the Board of Trade of the city of Chicago; that all the dealings were in form contracts for future delivery, in which the seller had the option of delivering, at any

time during some month, and (to the Court, Printed Rec., 63–4) that up to April, 1882, all contracts made by Barber for White had been settled or closed by counter trades prior to the month in which delivery could be made. He also speaks of wanting grain stored and resold again (Printed Rec., 33), and of one trade being made to offset another. These matters, with others in his testimony, leave room for saying that White's explanation of his directions to Barber, viewed in reference to what appeared to be done, could not be fairly construed as going further than to raise a question as to some of the contracts in the series, yet not as to those under consideration. The question as to some part of the series of transactions would be what construction should be put upon them, and the evidence of White would be so doubtful as to those that the court would be obliged to say that such contracts might be open to a construction compatible with not only legality, but with regularity in every sense. To put the matter in the most favorable light possible for Mr. White, it might be said as to some of the series, they are open to two constructions, the one construction lawful and the other unlawful. The rule of law then would be that the construction treating the contracts as legal must be adopted.

U. S. v. *Cent. Pacific R. R. Co.*, 118 U. S., 225.

The instructions which White admitted he gave to Barber would have required Barber to make valid contracts. Such contracts would be made on the Board of Trade, and of course would be subject to the rules and regulations of the Board, and binding, as between members of the Board. This would go to show that White's orders to Barber did not permit Barber to enter into in-

valid transactions. The whole tendency of White's testimony, even as to the series of transactions other than the contracts under consideration, is to show that there was to be no infirmity in the contracts, as between Barber and his fellow-members of the Board of Trade. As to the contracts under consideration, the evidence leaves no doubt of their legality, and the most unfavorable construction which could be put upon the matter as against Barber, even in regard to the series of transactions other than the special contracts necessarily brought into consideration here as being the ones on account of which a difference exists, would lead to the same conclusion. Barber always had to take the risk of making a settlement or arranging with the parties if a counter trade was not made or a settlement was not effected. There was no illegality in all this.

Greenhood on Public Policy, 237.

Rule ccxvii, stated in Greenhood on Public Policy, page 234, is thus:

"But a contract between principal and agent, by which real purchases and sales are to be made by the latter with his own resources, the former neither to furnish nor take the commodity, nor to advance anything, nor to be concerned in anything but the differences, to receive profits and reimburse for losses, is valid, though as to the principal it is practically a wagering contract."

To the same effect is Dewey on Contracts for Future Delivery, 324; and the author says the agent may recover for his losses in such cases.

II.

Suppose the attitude of White and Barber to be reversed in this case, and that Barber should make a claim for the reimbursement of moneys paid out by him for White on these contracts. What would then result? It would be in harmony with *Higgins* v. *McCrea*, 116 U. S., 671, to declare that if Barber had paid over these moneys on account of his liability under the contracts for the sale of the wheat, he would be entitled to recover the same from White, supposing White had not refunded such moneys. As between Barber and White, Barber was only to receive commissions, and his commissions were not dependent either on gains or losses by White. "The "whole element of gaming and wagering was absent from the contracts entered into by the parties."

Thacker v. *Hardy*, 4 Q. B. Div., 685–6.
Warren v. *Hewitt*, 45 Ga., 501.
Ex parte Rogers, 15 Ch. Div., 207.

III.

But in fact the legality of the contracts is not impeached.

The facts in this case do not indicate, certainly not with any certainty, that any of the contracts made by Barber were wagering contracts. The test of illegality in such cases is not merely the intention of one of the parties as, for example, of White himself, but of all the parties to the contracts.

Kirkpatrick v. *Adams*, 20 Fed. Rep., 287.
Lehmann v. *Strassberger*, 2 Woods, 554.

Gregory v. *Wendell*, 40 Mich., 432.
Williar v. *Irwin*, 11 Bissell, 57; S. C., 110 U. S., 499, 508.
Clarke v. *Foss*, 7 Bissell, 540.
Bangs v. *Hornick*, 30 Fed. Rep., 97.
Tomblin v. *Callen*, 24 Cent. L. J., 439.

It will be understood, of course, that as to the contracts for the 100,000 bushels of wheat which was to be delivered in July, 1882, our position is, that beyond all possible doubt, they are shown to have been really valid contracts, not only by the testimony on the part of Barber, but by the testimony of White himself, and that White is equitably estopped from denying their validity. But the foregoing observations, so far as they imply that there could be room for debate, under some aspect of White's testimony, which of two constructions should be put upon certain of his dealings with Barber should be applied, do not so much concern or apply to the particular contracts as to the wheat sold for July delivery, as they do to transactions other than those contracts. Under the rule before mentioned, that where a matter is open to two constructions, the one lawful, and the other unlawful, the former must be adopted, it would not be at all difficult to maintain that White's evidence, interpreted with reference to what he admits was done in carrying on his business, does not impeach a single item of Barber's conduct, much less the contracts as to wheat for July delivery. Indeed, all the transactions seem to have been under valid contracts in view of the law as laid down in *Wolcott* v. *Heath*, 78 Ill., 436–7, which has been followed in the latest rulings in that state, as for example, in *Miller* v. *Bensley*, 20 Bradwell, 538.

8 Myers' Fed. Decisions, 315, 321.

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8 Myers' Fed. Decisions, 315, 321.

The transactions under consideration will also bear all the tests applied in

Roundtree v. *Smith*, 108 U. S., 269.
Lehmann v. *Strassberger*, *supra*.
Gregory v. *Wendell*, *supra*.
Williar v. *Irwin*, 11 Bissell, 57.
Gilbert v. *Gauger*, 8 Bissell, 214.
Jackson v. *Foote*, 12 Fed. Rep., 37.

The contracts under consideration were recognized and affirmed by White in so many ways that it does not lie in his mouth to say that they were unreal or invalid. A court of equity cannot accede to his demand for moneys which he paid to Mr. Barber, his agent, to indemnify the latter for losses which he was required to meet under these contracts. A few considerations will support these suggestions.

The contracts actually made by Barber are entirely unimpeached. Not a scintilla of evidence questions their validity. They were made in good faith, not as matters of form, but with the intention on the part of the contracting parties to execute or carry out the same in good faith.

Whether the contracts were to be regarded as gambling contracts did not depend upon the intention of White, merely. If it depended in part upon his intention, yet, as acts speak louder than words, what he did with reference to the specal contracts to be considered will prove that such contracts were not gambling contracts. In this regard the case of *Jackson* v. *Foote*, 11 Bissell, 223, presents some illustrative features; yet the case of the commission merchant here is immeasurably stronger than in that case. A further illustration of the need of inquiring

what was the actual purport and intent of the contracts and parties thereto, respectively, as between Barber and the purchasers from him, irrespective of any probable or possible intent of White in giving general directions to Barber to deal only with responsible parties, etc., will be found in *Kirkpatrick* v. *Adams*, 20 Fed. Rep., 287, where Judge Hammond held that if the commission merchant made real contracts, he could recover from his principal. He also said: "It is a strange doctrine that being unin-"structed and unrestricted, the agent must lose his ad-"vances in lawful dealings, because his principal intended "to violate the law against gambling and supposed he was "doing this." (*Ib.*, 294.)

When White charges that these contracts for the delivery of wheat in July were violative of the Illinois statute, how does he dispose of the admission of his counsel on the trial of the suit at law that such contracts were not puts or calls? (Printed Rec., 71.) Does he dispose of the fact that two of the commission merchants with whom Barber dealt, testified to the genuineness and reality of the contracts, as Barber himself did, and that thereupon his, White's, counsel, in the progress of said trial, admitted that the other persons who entered into the contracts with Barber would testify as to the same as Bliss, one of the contracting parties, testified? (Printed Rec., 101.) Or, again, how does he dispose of the tender, which he approved; of the call for a committee to fix the price under the rules of the Board of Trade, and of the fact that the Board of Trade does not recognize puts and calls or unreal contracts? (Printed Rec., 72.) Or, once more, how does he avoid the conclusion of the reality and legality of these contracts when he frequently, before the maturity of the contracts, expressed his intention to have the pur-

chasers held to the same, and when after the decision or award of the committee he caused a bill in chancery to be filed, and to be prosecuted to the highest court of the state through a test case, in which bill no sign of a charge of the illegality of the contracts, nor of any objection that they were fictitious or unreal, appears?

IV.

The case of *Higgins* v. *McCrea*, 116 U. S., 671, clearly disposes of the whole case of White herein. In asking to be allowed to collect or receive these moneys, he is assuming the exact position which was assumed by Higgins and Gilbert in that case; that is to say, he is claiming that the money was advanced by him to carry on a gambling transaction, and that his intent in giving instructions to his commission merchant, Barber, was to gamble by merely speculating in margins and differences. In that case, speaking of a claim of this character, this court held in *Higgins* v. *McCrea*, *supra*, that there was no statute of Illinois to authorize the recovery of money so paid, and therefore that the case, as stated by Higgins and Gilbert, was not one on which any recovery could be had. The court, per Mr. Justice Woods, said:

"We do not see on what ground a party, who says in "his pleading that the money which he seeks to recover "was paid out for the accomplishment of a purpose made "an offense by the law, and who testifies and insists to "the end of his suit that the contract on which he "advanced his money was illegal, criminal and void, can "recover it back in a court whose duty it is to give effect "to the law, which the party admits he intended to violate."

V.

The ruling of this court in *Higgins* v. *McCrea* applies so explicitly to the case of White, as he has herein chosen to make it, and at the same time would so fully entitle Barber to recover, if he had been obliged to sue White, that the argument in behalf of Barber could properly be rested on that case alone. In pursuing the argument, however, conclusions similar to those announced in that case will be deduced from other cases herein cited, which seem equally applicable, and also decisive of White's claims.

There is no statute of Illinois which would entitle White to recover these moneys from Barber after the payment of the same by Barber to the persons with whom he dealt. But a statute would be needed to allow such recovery, even if the contracts which Barber had made were contrary to the statute. Observe *Yates* v. *Foote*, 12 Johnson, 1. Also *Ruckman* v. *Pitcher*, 1 Comst., 402–3, explaining the enactment of a statute in New York for the recovery of money in certain cases.

In Illinois, only the "winner" of money lost in gaming is made liable to an action for the recovery of it; and Barber is not the winner. (Rev. St. Ill., 1 Starr & Curtis, 792, Ch. 38, § 179.) *Jackson* v. *Foote*, 12 Fed. Rep., 37.

According to White's theory, as to his desire to gamble, etc., he is the *chief and seemingly the only party in guilt*, and therefore is not entitled to recover.

Story on Agency, § 233.
Wharton on Agency, § 250.
Patterson v. *Clark*, 126 Mass., 531.

His remedy, if any, would be against the parties to whom Barber paid the money.

Love v. *Harvey*, 114 Mass., 80.

In claiming these moneys by an attempted repudiation of the contract, after Barber had been required to pay them out for damages, White violated the established doctrine that where he received the profits arising from trades in his behalf he should not be allowed to repudiate those only which were unprofitable. He should have repudiated all or none.

Story on Agency, § 25,
Wolcott v. *Heath*, 78 Ill., 433.

These moneys were voluntarily paid over by White to Barber to meet the liabilities of the latter as agent for the former, and on general principles White cannot recover them back.

Warren v. *Hewitt*, 45 Ga., 501.
Wyman v. *Fiske*, 3 Allen, 208.
Thacker v. *Hardy*, L. R., 4 Q. B. Div., 685; S. C., 18 Am. Law Reg., N. S., 254.

VI.

White could not revoke Barber's right to pay over the money after Barber's liability had become fixed, so that he was liable to be expelled from the Board of Trade, etc.

But what of the aforesaid notice of April 2, 1883, in which White attempted to deprive Barber of the right to meet his obligations, which were then fixed, to pay the damages for non-delivery? It is true that the notice was

given before the moneys had actually been paid over, but Barber was not at liberty to withhold payment. So far as the moneys had been put up as margins they had passed beyond his personal or individual control as effectually as if the damages had actually been paid. Such is the effect of the Rule as to Margins. (Printed Rec., 127.) He accommodated White so far as to delay payment until suspension from the privileges of the Board of Trade, or possible expulsion was actually imminent; the delay being with a view of enabling Mr. White to protect Barber if he could. But Barber's liability had become fixed, as soon, at least, as the test case of *Wright* v. *Board of Trade*, 15 Chi. Leg. N., 239, was decided, and he was fully authorized to pay over the money which was in his hands to meet the contingency which had then happened.

Read v. *Anderson*, L. R., 13 Q. B. Div., 779; S. C., 16 Cent. L. J., 332; S. C., 48 L. T. R., N. S., 474.

Rosewarne v. *Billing*, 109 Eng. Com. Law, 316.

Indeed, after the deposit of margins, if not on the making of the contracts, the matter was beyond recall.

Both in law and in good morals the right of Barber to pay over these moneys was irrevocable upon the making of the award of the committee of the Board of Trade, the action of which was desired by White; and the duty to pay over the same was confirmed when the Supreme court of the state (see *Wright* v. *Board of Trade, supra*), sustained the action of the committee. It would be the height of injustice to deny Barber's right, in that situation of affairs, to pay over the moneys. After he had discharged his duty towards White in every way, Barber

was not under any Christian code of morals required to lay down his livelihood, merely because White at that stage began to say this matter is illegal. Saying so did not make it so; nor was it so.

The decision in the Wright case, which was chosen as the test case, and the decision in the case at law of *White* v. *Barber*, both show the legality of these contracts; and the case at law established the entire fairness of Barber, which, indeed, no one has dared to deny.

The moneys which Barber deposited in bank never belonged to White, nor could he rightfully claim the same. The bank was debtor to Barber for the same, and Barber had the legal right to recover them. Such legal right drew to it every equity when Barber paid over all damages which had accrued under the contracts under consideration, which payment was made April 24, 1883 (Printed Rec., 65), which was before the filing of the bill of interpleader in this case, and months before White brought his suit at law.

VII.

In conclusion, the claim of White to these moneys is so shadowless and thoroughly inequitable, that he should be required to pay damages herein; and an award of such damages for causing these moneys to be so long detained in the registry of the court, and thus to be most unjustly withheld from Barber for years now gone by, is respectfully prayed. Barber has been deprived of the use of these moneys since he deposited them as margins (Printed Rec., 132), and more than four years ago, to wit: on the

24th of April, 1883, paid them out in settlement of damages for White. Besides this loss of the use of these moneys, White has put Barber to the expense of a double litigation about them, a litigation in both the cases between the parties now in this court by writ of error and appeal, respectively. It is but reasonable to enforce the rule here as to damages.

Respectfully submitted.

THOMAS DENT,
Of Counsel for Appellee,
Geo. M. Barber.